United States Court of Appeals

for the Second Circuit



APPELLEE'S APPENDIX

76-2109

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

- -X

RAYMOND GILLIARD, FRANCIS BLOETH and JOHN SUGGS,

Plaintiffs-Appellees,

-against-

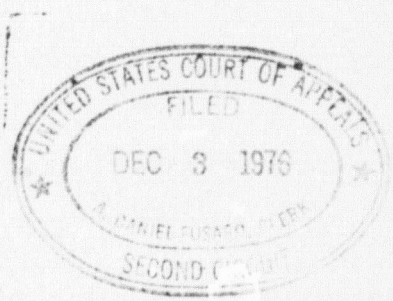
RUSSELL G. OSWALD, Commissioner of Correctional Services and J. EDWIN LaVALLEE, Superintendent of Clinton Correctional Facility,

Defendants-Appellants.

No. 76-2109

- -X

APPENDIX FOR PLAINTIFFS-APPELLEES



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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF NEW YORK

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RAYMOND GUILLIARD, FRANCIS BLOETH and JOHN SUGGS,

Plaintiffs,

-against- 73-CV-249

PETER PREISER, Commissioner of Correctional Services; RUSSELL G. OSWALD, Commissioner of Correctional Services; and EDWIN LA VALLEE, Superintendent, Clinton Correctional Facility,

Defendants.

----------X

HEARING in the above-entitled matter came on pursuant to Notice, at the United States District Court, held in and for the Northern District of New York, at Auburn, New York, on Monday, April 7, 1975, commencing at approximately 1:30 p.m., before the Honorable Edmund Port, United States District Judge.

APPEARANCES:

WARREN RICHMOND, ESQ.,
and DAVID ENGLANDER, ESQ.,
Attorneys for Plaintiffs.

THE HONORABLE LOUIS J. LEFKOWITZ, Attorney General,
The State of New York,
BY: TIMOTHY O'BRIEN, Assistant Attorney General,
Attorney for Defendants.

THE CLERK: Raymond Guilliard, et al., versus Peter Preiser, et al., 73-CV-249.

MR. RICHMOND: Ready, your Honor.

MR. O'BRIEN: Ready, your Honor.

THE COURT: Both sides are ready. May I have the appearances, please.

MR. RICHMOND: I am Warren Richmond, and this is David Englander, for the Plaintiffs.

MR. O'BRIEN: I am Timothy O'Brien, for the Attorney General, Assistant Attorney General, your Honor.

MR. RICHMOND: At the outset, it has been incorrectly stated that this case is Guilliard versus Preiser, and due to the continuing error, this has been on all of the papers. The case is Guilliard versus Oswald.

THE COURT: Any papers that are designated Preiser as the defendant, are amended so as to show the correct defendant as Oswald.

MR. RICHMOND: Thank you.

THE COURT: Gentlemen, I have looked over the papers supplied to the Court and by the Plaintiff and the Defendant, and do you feel that it would serve any purpose to make a short opening? If it will, I will be glad to hear you.

MR. RICHMOND: I would like to.

THE COURT: All right.

MR. RICHMOND: Your Honor, in this Civil Rights action the plaintiffs, New York State prisoners, have sued the defendant prison officials as to recovery of damages for their prolonged segregation at the Clinton Correctional Facility, in the absence of any due process procedures whatsoever.

Plaintiffs will show that in February of 1973 they were removed from the general population at the Clinton facility and were summarily placed in disciplinary segregation. They never received any charges against them, and they never received any disciplinary hearing, and at no time were they ever told specifically what the reasons for their confinement and punitive segregation was.

Nevertheless, they remained there for a period of 30 days, at which time they were transferred out of the Clinton facility.

Now, the defendants at various times in the pre-trial procedures, have raised two different justifications for their actions. At times they have said that there was an on-going investigation that was continuing throughout this 30-day period, and at other times they said there was an on-going emergency

throughout these 30 days -- this period. However, defendants will not be able to show that to establish an emergency or an investigation was continuing at that time, and certainly not for a 30-day period.

Instead, it will become apparent that what the defendant had been doing is invoking the word "emergency" and also "investigation," to justify their treatment of the plaintiffs in the instant case.

Under the well-established law of this Circuit, and of this Court, they will not be able to invoke those words in order to forego due process proceedings, or even if defendants can establish that an emergency or an investigation was continuing during this period, it is our position that such an emergency or investigation did not justify the harsh, punitive treatment given to plaintiffs for this 30-day period.

Finally, we will show that the defendants, both of them, were responsible for the treatment, for the illegal treatment taken against plaintiffs, during the 30-day period, and that they did so in face of the well-established law of this jurisdiction, and as such they are liable for money damages to the plaintiffs.

Thank you.

MR. O'BRIEN: Your Honor, --

THE COURT: Before you start, Mr. O'Brien, as I understand, the plaintiffs claim they were placed in segregation without any due process of any kind?

MR. RICHMOND: That is correct, your Honor.

THE COURT: Absolutely none?

MR. RICHMOND: That is correct.

THE COURT: And in anticipation of an emergency defense, under the regulations, or an investigation, you have addressed yourself to that?

MR. RICHMOND: That is correct, your Honor.

MR. O'BRIEN: If the Court please, the opening statement made by the plaintiffs' attorney pretty well covers what he --

THE COURT: Everything but the facts.

MR. O'BRIEN: I might add that there is no question here, and we will produce evidence that in February of 1973 that at Clinton Correctional Facility a situation arose then at that facility which necessitated the Superintendent of the facility to declare an emergency which was applicable not only to these three plaintiffs, but which was applicable

to the entire population of Clinton Correctional Facility, not only as to being keep-locked in their cells, but also to be confined to special housing units, including Special Housing Unit No. 14.

The investigation was part of the emergency situation and these individuals, these three plaintiffs, along with hundreds of other inmates were confined to special housing unit without the usual procedures that accompany such confinements.

Such action on the part of the Superintendent and his agents was based upon a specific section of the New York State Codes, Rules and Regulations, and even without such a specific section, an emergency situation that arises at a correctional facility such as Clinton Correctional Facility, where approximately 2,000 men are housed, was, in our opinion, and we will submit and ask the Court to find that this emergency situation justified the temporary confinement of these plaintiffs to the special housing units where they were placed.

THE COURT: Let me ask you this, Mr. O'Brien: If I correctly interpret your opening statement, there is one question for the Court to decide: Was there an emergency? From your opening statement you can justify the holding during the

investigation because the investigation was part of the emergency, is that correct?

MR. O'BRIEN: That is correct.

THE COURT: So I have really only one fundamental question to determine: Did an emergency exist?

MR. O'BRIEN: I believe that that is correct, your Honor.

THE COURT: All right.

MR. RICHMOND: Call Francis H. Bloeth.

FRANCIS H. BLOETH, called as a witness, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. RICHMOND:

Q Where are you presently confined? And what is your sentence?

A I am there for natural life.

Q And what was the basis of that conviction?

A First degree murder.

Q And have you any other felony convictions?

A One, 1953 for auto theft.

Q And where were you --

THE COURT: Will you talk louder, please.

It is very hard to follow you.

BY MR. RICHMOND:

Q Where were you confined in February of 1973?

A C Block of Clinton Correctional Facility.

Q And now, on February 15th, while at Clinton, you say that you were confined to C Block, and can you describe the conditions in your cell at this time?

A Well, I work as a Block Porter, and in the cell there was all of my personal property, and legal material, and a full-sized locker for clothing, a desk, a chair, a bed, a sink, toilet bowl, and any other personal properties that I might want, like a typewriter, and stuff like that.

Q Now, how long were you out of your cell each day?

A I was out of my cell in that particular capacity from approximately 7:45 until about 3:30 or 4, when the institution closed, with the exception of half an hour for counsel, so practically the entire day that the institution was open.

Q Where did you eat your meals?

A I cooked right in the block; because of my job, I was able to cook my own food. I ate on a little table out in the gallery.

Q When you said you were a block porter, how much did you earn per day?

A Twenty-five cents, but I didn't have that job for the money.
Q Why not?
A Well, in that job, I had more time to do my legal work and study law, and plus I had enrolled in the college program from Potsdam University, and this just gave me more time to study.
Q And what courses were you taking?
A English 101, and 102.
Q And you had been attending classes?
A Yes, it was a new course and I had been attending and I guess I had went about three times.
Q Now, when you were in C Block in the general population, were you permitted to attend the religious services?
A Yes, every Sunday.
Q And do you attend them?
A Yes.
Q And you are permitted to mingle with other inmates?
A Yes. Well, you go to the yard and, in fact, I had more freedom to wander around because of my job. I would wander up to the galleries to see the men, and I could go to the commissary, you know, at more or less at will. I was able to go to sick call, go to the church, because they have church during the week, some off-times, and I would go on weekday mornings

to services, and I was able to go and take a shower whenever I wanted, and you know, I could go to the commissary and I had maneuverability and I wasn't confined.

Q Could you state what, if anything, occurred on February 15th, 1973?

A I believe at that time they closed the entire prison down for a general shakedown.

Q Do you remember why the institution had been closed down at that time?

A I had heard it was because of some stabbings of some type.

Q And had you participated in anything concerning these stabbings?

A No.

Q And did you witness any of these?

A No.

Q Now, in the institution when there was a shakedown or it was keep-locked, how long did they keep-lock?

A Well, it lasted for several days. After about the second day they allowed some of the fellows out to go to the shops and clean up, and my job, I was out almost all of the time to feed those permanently keep-locked, that they had for disciplinary purposes. And then I think on around the third day they locked

it up again, at least my block, and they shook it down again, and they locked it up again for at least another day.

THE COURT: This is around February 18th?

THE WITNESS: Around there, on the 18th or the 19th. Two days later, or something like that.

BY MR. RICHMOND:

Q And while everyone in the institution was keep-locked, you were out and working as a porter, is that correct?

A The only time I wasn't moving around was when the actual shakedown of my gallery took place.

Q Now, in this shakedown, what went on in the shakedown of your gallery?

A Well, it was a total search, and all properties in the cell, and they went into the lockers, and all personal stuff, and like the letters and a complete strip-search, and you know, oral and rectal, and all of the clothing, and the total and complete search of every imaginable type.

Q Was any form of prison contraband found on your person or taken from your cell?

A No.

Q Now, you said that the keep-lock ended after all of the whole institution was searched, and after about three days, and what happened at that time?

A Well, after the keep-lock had ended they were letting galleries out to go to the mess hall, and they were letting them go to the shops to clean up, and giving them yard privileges, and then I was told that I was keep-locked again.

Q When was this?

A I think that was around the 19th or the 20th, somewhere. Offhand I don't remember the exact date. It was about a week after the original, around the 18th or the 19th, when the gallery officer told me that he had been informed by the head clerk that I was to be placed in keep-lock.

Q And what happened then?

A Well, when he told me, nobody really took it too serious, because whatever it was that caused the shakedown was over, and in fact, I was busy cooking and cutting stuff to cook when they told me about it, and he told me that, well, if I see any sergeants or anybody come down to go to my cell, but other than that, just hang out and do my job, because there was no other way, and he gave me a list of around ten or twelve people and told me to tell these guys that they are locked in, and that is what I did.

I stayed out until the institution closed for the evening closedown, you know, about 3:30

or 4 o'clock.

MR. O'BRIEN: If the Court please, with respect to this conversation, may we have the name of the officers?

THE WITNESS: Joe Woods.

MR. O'BRIEN: Joseph Woods?

THE COURT: Joe Woods was the answer.

THE WITNESS: That is the C Block for Captain.

BY MR. RICHMOND:

Q And what happened after that?

A Well then, I believe it was the next day we --

Q Do you remember what day this was?

A I think it might have been the 19th. It might have been the 18th or the 19th. I am kind of hazy as to the days. It might have been around the 18th or the 19th, but then the next day Mr. Woods' brother, Sergeant Woods, and his name is Emmet Woods, and he came down and told me to pack up my stuff that I was being transferred.

Q And did he say where you were being transferred to?

A No. He just told me it was just a temporary thing and that I was going to be transferred.

Q O.K. And where did he take you after he told you you had to go?

A They put me in E Block, which was converted into a special housing unit.

Q Was that the normal procedure at that time for people who were being transferred to be placed in special housing units?

A No. In fact, I inquired about that and he says that this is a new procedure, that they were just starting and, you know, usually -- in fact, the procedure right now, unless there is a large transfer going out -- if it is just one or two, they just lock you in the cell overnight, and you pack your property, and index it, and then the next morning you leave.

Q How many men -- were you the only one placed in E Block?

A No, E Block, I guess it was probably 250 to 300 guys were placed in E Block.

Q And what were the conditions in the block at that time, and where did you eat your meals?

A Well, there was no recreation in E Block, first of all, but you were allowed to go out of the cell about an hour a day, into a small enclosed yard. You were searched when you went out into the yard, and you were searched when you came back in. You never went to the mess hall. You ate all of your food, which incidentally was never heated, and it was always cold because it was in buckets, and they

give you scoops of food in bowls, and you ate that in the cell. You got a shower once a week, and you got approximately 15 minutes to wash yourself and your clothes, and everything else, and I don't even recall getting a change of clothes. I had to wear what I had. I had my property, but I never had a chance to turn anything in to the laundry. I did send for the commissary. I don't even recall whether I got it or not. But I know that they didn't want any breakable materials, jars and stuff, and you couldn't go to church, and you couldn't go to the movies, and you couldn't go to the yard and, in fact, the porters that were working in E Block were fired for talking to the guys that were in the cells.

So the restrictions there were pretty harsh, plus the fact that, you know, for myself, I had no idea what was going on.

Q Were you permitted to stay in the college program?

A No, I blew all of that. I lost that.

Q Was there any other activities that you were able to partake in during that time?

A No, the yard was just a space, and all you could do was just walk. It was very small, about four times the size of this room.

Q Now, were you ever told -- did you ever receive a

formal notice as to why you were in E Block?

A Yes, I received a paper from Sergeant McCormick, I believe it was.

Q I will show this to you now, and other than the fact that it has Mr. Guilliard's name on it, is that it?

A Yes, except that it had my name on it. That is it.

THE COURT: Is that marked?

MR. RICHMOND: No.

THE CLERK: Plaintiff's Exhibit 1 marked for identification.

(Document marked Plaintiff's Exhibit 1 for identification.)

MR. O'BRIEN: I have no objection.

THE COURT: It will be received.

THE CLERK: Plaintiff's Exhibit No. 1 received in evidence.

(Plaintiff's Exhibit No. 1 for identification, received in evidence.)

BY MR. RICHMOND:

Q Now, to your knowledge, were you the only person to receive that?

A No, when he handed it to me, he had a pile about an inch thick. I would say probably one hundred or one hundred fifty of them.

Q Now, did you ever have a hearing regarding your

confinement in E Block?

A I never had an official hearing. I did see someone over there. I never had an official hearing, though.

Q And is this in E Block?

A Yes.

Q And where was this?

A A Senator Eve, or Assemblyman Eve, and two people came around one evening to inquire as to what was going on.

Q Mr. Eve, of course, is not a correctional official?

A No.

Q But did you ever meet with any correctional officials or see anyone?

A No. I know someone was there with Mr. La Vallee, and Mr. La Vallee asked Mr. Oswald if he wanted to speak to anybody, and Mr. Oswald said no, and so there was nobody left to speak to.

Q Now, were you ever given any more specific reasons as to why you were in there, other than contained in the note?

A No.

Q And no one came to interview you or to ask you any questions about the events of February 15th?

A No. In fact, you couldn't get any interviews. In fact, you couldn't get anything. You couldn't even

get medication. You couldn't get hospital treatment. I had a dental problem, and it took two days for them to round up an officer or two to put me in handcuffs to take me down the hall to the hospital to the dentist to get treatment, but you couldn't get any other treatment. The only thing that you could get was aspirin. I never saw a nurse or anything come over there.

Q Is that similar to the normal treatment?

A No, no. The normal treatment, you put in a slip in the morning, and you would be taken over to see the doctor.

Q Now, were you ever told how long you would remain in E Block?

A Was I ever told?

Q Yes.

A No.

Q And how long did you remain in E Block?

A I stayed in E Block until around March 12th, I believe it was.

Q And what happened then?

A Then I was told to pack up, that I was moving, and while, you know, I thought I was being transferred, I was put in Unit 14.

Q Were all the inmates who were in E Block, 250 or 300,

transferred to Unit 14?

A No, ten or twelve. Probably about 100 or so were transferred to other institutions and the rest, I assume, were put back in the population. They were just taken out of E Block.

Q And what is Unit 14, exactly?

A Unit 14 is a total isolation unit. It is a building by itself, and you have to take an elevator upstairs, and you go through a corridor, and an enclosed corridor, and two steel doors, and take an elevator upstairs, and it is Unit 14, and it is fenced off and removed, and it is total isolation, and total segregation.

Q Do you know what it is used for in the institution?

A Pardon me?

Q What is it used for?

A It is supposed to be for violent disciplinary problems, assaultive behaviors, and the culprits are placed in there to keep them away from other people.

Q Had you ever been there before?

A No. In fact, this was the first time I was ever in any segregation at all in any institution, that I can recall.

Q Were you told why you were in Unit 14?

A No.

Q Were you given a hearing before going to Unit 14?

A No.

Q Were you ever given a hearing?

A Yes. Well, it could be called a hearing. I demanded a hearing.

Q And what happened?

A I asked for a Superintendent's proceedings, and I was called out, and I appeared before three people, and who they were I don't remember. I think it was probably a Lieutenant or somebody, and two officers, and I asked them -- they asked me first, what do I want? Then I told them I want to know why I am in Unit 14, and they looked at my disciplinary card and they said, "Well, as far as the disciplinary card is concerned, you are not in Unit 14. So apparently it is the Superintendent's orders, and I will let you know what the results are when I go out," and that was it.

Q Did you ever hear those results?

A No, I never heard nothing any more.

Q But even that appearance before them was at your insistence?

A Yes, at my insistence, right.

Q Did anyone come to talk to you or interview you while

you were in Unit 14?

A Well, I spoke to a Commissioner Quick, and I think it is William Quick, but I am not sure of his name. He happened to be in there visiting, and he walked by, and I asked him why I was in Unit 14, and he asked me where I was before I came to Clinton, and I told him at Green Haven, and he asked me where I was before Green Haven, and I told him Attica, and he asked me where I was before Attica, and I told him Clinton, and he said, "That is why you are in Unit 14," and he walked away.

Q Now, in your block, what were the conditions like in Unit 14 compared to E Block?

A In E Block you had all of your property, and all of your personal stuff, and well, you knew you was in the restrictions, and the restrictions for me, Unit 14 is a fear place, and the keepers there have mattocks --

MR. O'BRIEN: I cannot understand him. He is talking too fast.

THE COURT: Will you please slow down.

THE WITNESS: A mattock.

THE COURT: What is that?

THE WITNESS: It is like an axe handle about this big (indicating).

THE COURT: Indicating about three feet

long?

THE WITNESS: Right, with a diameter at one end of about four inches, and at the other end of about an inch and a half. That is what they carry for clubs.

BY MR. RICHMOND:

Q What kind of personal property were you allowed in your cell?

A The only personal property was you could have a pen, a pencil -- no, two pencils, and you could have your legal material, and some reading material, and two changes of clothes, and a heavy jacket, and that was it. You couldn't have no -- on your legal stuff you couldn't have no commissary items that were allowed in your cell. They only gave you half a toothbrush. They broke it off so it was only about two inches long.

Q How about contact with other inmates in Unit 14?

A No, they never used the front of the cell door. There is a back door to the cell and you always go in and out through the back door, and to this day I have never seen in Clinton all of the time I was there, I don't know who the inmates were living on that gallery with me. I know their names, and I know their voices, and one or two of them I met at

another time, but in Unit 14, other than recognizing a voice or a name, I never saw one, because you never saw them. They did have a small yard in the back, and I went out there two or three times, and I found out why nobody wants to go out there.

Q Why is that?

A Well, when you went out in the back, first of all you went through the frisk procedure.

Q And would you describe that procedure?

A It was a strip-frisking, and you know, they just took your clothes off and pat you down, and then you put them on, and then you go out into the yard. When you are outside the yard you have to keep moving, and you cannot talk loud so that anybody in the cells could hear you, or it is a disciplinary record, and up on a little walkway they usually have one or two officers with tear gas guns, for whatever reason I don't know because there is only one inmate, and you know, you are kind of reluctant to go to this yard. You are intimidated not to.

Q Was tear gas ever used while you were in Unit 14?

THE COURT: I can't hear that question. Would it help if I admonished you, the same as I did the witness?

MR. RICHMOND: O.K.

BY MR. RICHMOND:

Q Were the tear gas guns ever used when you were in Unit 14?

A Yes, they were used several times. Never against me, but I felt the results of it. Unit 14 is built on a square area. The cell blocks run around the outside with a yard in the center. Now, the cells, on becoming closed, along the outside perimeter wall of the building itself, there are windows. Now, when they used tear gas in Unit 14, they closed the windows, and they opened doors to each unit so if any one tier gets gassed everybody suffers the consequences, and for some reason or other, they fired gas three times, and you know, personally I don't think it was right.

Q Now, how long did you remain in Unit 14?

A I remained in there until around the end of March when I was transferred out of the facility.

Q Could you tell the Court, again, --

MR. O'BRIEN: I will reserve that for cross-examination.

BY MR. RICHMOND:

Q Could you tell the Court generally how the events that you described affected your mental state throughout this period?

A Well, it is hard to describe exactly what effect it has but, you know, I got a "life" and in order for me to make parole I have got to have a good record. It is impossible to get a good record because now this investigation follows me. Nobody knows why I was investigated or what I was investigated for. But it is going to handicap my applications, if I make them, to commute my sentence, and that may be very detrimental for parole, and I go for parole in four years, and I have got sixteen in, and this investigation could conceivably extend my period in prison.

MR. O'BRIEN: I am going to object to what could conceivably happen here.

THE COURT: I will let it stand. That is what you think?

THE WITNESS: This is how I feel.

BY MR. RICHMOND:

Q Has it ever happened, has an incident ever been used against you in any other institution?

A Yes.

Q And could you explain that?

A I was transferred to the Attica Facility on June 14th of 1973, where I had previously been, where previously I had won five institution passes, and I had a trusted

job as a runner, and because of this incident here, the next day, June 15th, I was placed in the Special Housing Unit under investigation, and as I had done nothing to be investigated, I asked the Superintendent why, and he told me it was an extension of the Clinton investigation.

MR. RICHMOND: I have no further questions.

MR. O'BRIEN: I have some questions.

CROSS-EXAMINATION

BY MR. O'BRIEN:

Q Mr. Bloeth, did you testify that while you were in the Special Housing Unit, you were not allowed to leave the block for any purpose at all?

A Except when I was escorted to go to the dentist.

Q You didn't mention that on your direct testimony, did you?

A Yes, I did.

MR. RICHMOND: Objection, your Honor. He did.

THE COURT: I will judge whether he did or did not.

BY MR. O'BRIEN:

Q If you did, I did not hear you. Isn't it a fact that

on March the 9th, or February 9,excuse me, -- whatever that date, that you were escorted to the dentist with another inmate while you were at E Block?

MR. RICHMOND: That has been testified to.

MR. O'BRIEN: I want it clear on the record.

THE COURT: I will let him answer.

THE WITNESS: Not with another inmate. Another inmate may have gone. I went with two officers.

BY MR. O'BRIEN:

Q To the dentist?

A Yes.

Q And were there any other occasions when you left the block?

A No. When I was transferred out.

Q Mr. Bloeth, I show you Plaintiff's Exhibit 1 in evidence,and I ask you if you, when you received that, did you read it?

A Yes.

Q And did it explain in there why you were being placed in "E" Block?

A No, not to me.

Q Doesn't it state in there that due to a disturbance

in the facility, such action was being taken?

A Having taken no part in the disturbance, that told me nothing.

Q What you are saying is: You weren't aware of the extent of the disturbance, is that correct?

A I had nothing to do with the disturbance. I did not see any disturbance, and in fact, prior to being placed in E Block, I was out of my cell all day, so I did not understand where the disturbance came from. This lock-up had ended.

Q Are you going to sit there and testify that at Clinton Correctional Facility on February the 15th, of 1973, no disturbance of any kind took place in that entire facility?

MR. RICHMOND: Objection.

THE WITNESS: That is not what --

THE COURT: (Interrupting) You may answer.

THE WITNESS: That is not what I said.

BY MR. O'BRIEN:

Q As far as you were concerned, you did not know of any, is that right?

A I had heard of it. I didn't see any.

Q What did you hear?

A I heard that there had been some stabbings.

Q And wouldn't you have called that a disturbance?

A Well, I have been in for sixteen years. I have been in a lot of institutions, and I am sure that you are well aware of the fact that there are stabbings and it does not necessitate the closing down of a prison.

THE COURT: If you were running the prison, you wouldn't close it?

THE WITNESS: Right. Especially for innocent people.

THE COURT: I think, Mr. Bloeth, that it would be better if you didn't volunteer.

Now, the reason I tell you that is because if your attorneys want to know something they will have another opportunity to ask you, and you can volunteer information that is irrelevant or immaterial in this proceeding, and perhaps that your attorneys do not even know about, so you should just answer the question.

THE WITNESS: Sorry.

BY MR. O'BRIEN:

Q Did you testify that there was one stabbing in the corridor near your block?

A I don't recall that I testified to that.

Q Was there?

A There was one by B Block, or D Block or E Block.

Q And how far away from your block were these?

A About 60 or 70 yards.

Q And do you know whether anyone was injured in that stabbing?

A No.

Q But did you participate in any way in it, and I mean by that, were you asked to help in any way?

A No.

THE COURT: I didn't understand what block that was.

THE WITNESS: In the corridor between D and E Block.

BY MR. O'BRIEN:

Q Now, as I recall your testimony, all of the people in your particular block were keep-locked to their cells as of the 15th of February, 1973?

A On the 15th, yes.

Q And do you know whether or not that included the entire population?

A I understand that, yes.

Q Did someone tell you this, or did you --

A Well, it was common knowledge; grapevine.

Q And how long were -- or how long did each keep-lock take place with respect to the general population, if

you know?

A I believe it was two days, or maybe three days.

Q Do you know whether or not after that period all of the general population were returned to the general population, or was it a gradual return?

A It was a gradual return, I would say, to shops, and to the population, and to the yard, and from what I understand for the purposes of cleaning up the shops from the shakedown.

Q And approximately how long would you say it took before the entire general population went back to normal, if you know?

A Well, you see, in that instance, I could not speak for the other blocks, you know. My block had a lot of the tailor shop, and most of them were going out, and I was out of my cell after the shakedown on February 16th -- I was out of my cell as were other porters. But as for other blocks, you know, that is far removed.

Q And that was because you were a porter, is that correct?

A Yes.

Q And you were helping?

A Feed people.

Q In connection with the feeding of the inmates, the

general population that were confined to their cells?

A No, they ate in the mess halls. We fed the disciplinary keep-locks in the block.

Q Wasn't there a period of time when the general population themselves, were confined to their own cells?

A Yes, but I don't think -- I don't recall ever feeding the entire block.

Q There came a time, you say, when you were changed to E Block?

A Yes.

Q And do you recall the date?

A I think it was about around the 18th -- the 18th or the 19th of February.

Q And is that the time that you were given this particular notice that has been introduced into evidence?

A No, I received that about two or three days afterward; after I was in E Block. That was after I was in E Block.

Q And while you were in E Block, were you permitted to go out into the exercise yard?

A The E Block yard, but not the population yard.

Q No, the yard that you described.

A Yes.

Q And described here as being approximately four times the size of this courtroom?

A Yes, for an hour a day.

Q And did you avail yourself of this opportunity?

A Yes.

Q And didn't you, while you were out in E Block, have occasion to see other inmates?

A You mean from E Block?

Q Yes.

A Yes, those that went out, yes.

Q Did you have an opportunity to talk to them?

A Yes.

Q And was there any discussion between you and other inmates with respect to this condition or situation that was existing at Clinton Correctional Facility?

A Yes, there was a discussion all right.

Q And what, if anything, did you learn from these discussions?

A That those that I spoke to didn't know why they were there.

Q And no one knew that there was anything unusual going on at Clinton Correctional Facility?

A No, no one knew why they, themselves, were in E Block, not having partaken in any unusual circumstances like -- well, I don't want to volunteer

anything.

Q But did any of them make any statements with respect to the unusual situation that was existing at Clinton?

A Well, the unusual situation that was existing is from the viewpoint of the inmate, which is me, that --

Q (Interrupting) I am talking about any others.

A They had the same thing. The unusual thing was why were they in E Block.

Q They didn't know, either?

A They had nothing to do with the stabbings or anything.

Q At least, that is what they told you?

A Right. Well, they wouldn't have been in E Block, but in Unit 14, right away.

Q Now, during the time that you were in E Block, were you furnished with food; were you fed?

A Cold food, yes.

Q And were you permitted to take a shower and shave?

A Once a week.

Q And how many times -- you could only shave once a week, and take a shower once a week?

A You could only go to the shower once a week to shave, wash, and everything, because that is the only time that you got hot water. They didn't give out or nobody got any hot water, and you can't shave with that

cold water. They don't have the facilities for that.

Q Were you furnished with shaving utensils at other times?

A In the general population?

Q No, in E Block?

A No, they never furnished me with anything. If I had it, it had to be my own.

Q How long were you in E Block?

A About three weeks.

Q And you say that you arrived there, when?

A About the 19th of February.

Q And from E Block you went to Unit 14?

A Right.

Q And how long were you in Unit 14?

A Oh, about maybe two weeks.

Q Now, where were you when these visitors came through and talked to you? You mentioned the name of several people.

A Mr. Eve, and his people?

Q Yes.

A I was in E Block then, and when Commissioner Quinn came, I was in Unit 14.

Q Did you have occasion to talk to Mr. Eve?

A Yes.

Q And did you ask him any questions about the situation

that was existing there?

A Yes.

Q And what, if anything, did he tell you?

A He was investigating it.

Q He told you that he was there for the purpose of investigating the situation?

A All he said was, "I am investigating."

Q Now, I believe that you mentioned that you talked to Commissioner Oswald?

A No, I heard the Superintendent talk to the Commissioner while I was in E Block. They came in.

Q And did you see them?

A No, they were up on the next level.

Q And how did you know it was the Superintendent and Commissioner Oswald?

A I have spoken to both of them quite a few times. I know Mr. Oswald pretty well and I recognized their voices.

Q And yet you saw neither one of them, and you knew that this was Superintendent La Vallee, and Commissioner Oswald talking?

A Other than the fact that I recognized their voices, the officers made it common knowledge that they were in the institution, and you know, there was anticipation, hoping that they were going to come down

and talk to somebody.

Q Now, what about Deputy Commissioner Quick? Did you have occasion to talk to him?

A Yes.

Q And what did he tell you?

A He asked me where I had been, prior to coming to Clinton, and I told him. He asked me where I had been prior to that , and I told him at Attica. He asked me where I had been prior to that, and I told him at Clinton prior to that, and he said that that is why you are in Unit 14, and he walked away. So apparently, you know, I was in Unit 14 because I was in other institutions, and Commissioner Quick, that is all he said and left me.

Q And was this in response to a question that you asked him?

A Yes, I asked him why I was in Unit 14.

Q Now, did there come a time when you went back into the general population?

A No.

Q Did there come a time when you left Unit 14?

A Yes, I got transferred out of Clinton.

Q And where did you go?

A To ACTEC.

Q And are those initials and are those initials that stand

for something?

A Yes, the Adirondack Correctional Treatment and Evaluation Center.

Q And where is that located?

A Right next door to Clinton, in the Town of Dannemora. It is supposed to be used as a medium security facility.

Q And when was it that you were transferred to ACTEC?

A Oh, I think it was around March the 28th when I left Unit 14, and I went from Unit 14 to ACTEC.

Q Now, upon arriving at ACTEC, were you given any type of program to pursue at that facility?

A No, it was an evaluation type program, where they gave you psuchological and educational testing programs to determine, you know, your capabilities, your intellect, and find out if you have any deviations of any type, which is what that whole facility is based on, anyway. It is to more or less try and probe the mind of the prisoner to find out why he is in jail.

Q And did you have several interviews there, or just one?

MR. RICHMOND: Objection. All of this occurred after this event in which the plaintiff said --

THE COURT: (Interrupting) What is the materiality of this, or the relevance?

MR. O'BRIEN: He testified, I believe, that he went to Attica.

THE COURT: And then he went to ACTEC. What difference does it make where he went? There is no claim being made for this period. What does it indicate?

MR. O'BRIEN: I just wanted to show that after the emergency situation had subsided, that he was no longer subjected to anything of an unusual nature.

THE COURT: There is no claim that he was subjected to anything after, I believe it was March 27th or March 28th, and subjected to any kind of deprivation.

MR. O'BRIEN: There is no claim, but I think that it is relevant to the question that the fact that since the emergency situation has subsided, that he --

THE COURT: (Interrupting) You are now talking to him about being in Syracuse, where there was an alleged emergency situation in Buffalo, and -- all right, sustained.

MR. O'BRIEN: I have no further questions.

MR. RICHMOND: I have just two brief questions.

REDIRECT EXAMINATION

BY MR.RICHMOND:

Q Now, Mr. Bloeth, when you heard Mr. Oswald and Mr. La Vallee, and when you were in E Block, did you yell anything up to them at that point?

A Well, I called up that I wanted to see them. I called up to Mr. Oswald.

Q And did you receive any reply?

A No, I heard Mr. La Vallee say, "Do you want to see anybody?" He said, "no."

Q And did you hear them use each other's names at any time during this?

A No, I can't say that I can recall that. Just vocal identification.

MR. RICHMOND: I have no further questions.

THE COURT: Is there anything else? If not, thank you.

(Whereupon the witness was excused.)

THE COURT: One minute. I am just curious, Mr. Bloeth. Have I had any number of petitions from you?

MR. BLOETH: Yes.

THE COURT: Thank you.

MR. RICHMOND: Call John Patrick Suggs.

JOHN PATRICK SUGGS, called as a witness, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. RICHMOND:

Q Where are you presently?

A Eastern Correctional Facility.

Q And what sentence are you serving?

A Five to fifteen years.

Q And what is that charge?

A Rape and Robbery.

THE COURT: Can you hear the answers?

MR. O'BRIEN: No, your Honor, I cannot.

BY MR. RICHMOND:

Q What is the status of your present conviction?

A Well, on February 26th, the Southern District Judge vacated my pleadings --

Q What is the present status?

A On February 26th the Southern District Judge vacated my plea and sentence, and on March 12th, I believe, or maybe the 27th, one of the two, they

granted -- the attorney -- well, there was a stay on my case until I appealed.

Q And had you ever -- until they appeal it?

A Yes.

Q The District Attorney?

THE COURT: Please read that back.

(The previous three questions and answers were read by the reporter.)

THE COURT: What you are telling us is that Judge Duffy made some favorable decision for you, and the Court stayed the execution of that decision pending an appeal?

THE WITNESS: An appeal by the State.

BY MR. RICHMOND:

Q Do you have any other felony convictions?

A No, sir.

Q Mr. Suggs, where were you confined in February of 1973?

A I was confined at Clinton Correctional Facility.

Q And now, on February 15th, what housing block were you confined in?

A February 15th I was in E Block. I was there because this idle company is there and I was waiting for a job.

Q And is that in the general population, E Block?

A Well, on the 15th, why I was there was because I blew my job, and whenever anybody has got to get another job, they can't be in the regular population which is E Block, when they are idle.

Q And when you say you blew your job?

A I asked for a job change, and they put me in Unit 14.

Q But -- so this is after that period?

THE COURT: He said, "I asked for a job and they put me in Unit 14."

MR. O'BRIEN: Is that the answer?

MR. RICHMOND: That is what I heard.

MR. O'BRIEN: What day were you put in Unit 14?

THE WITNESS: I can't recall the date, but I got 7 days in the recall, and then on a Friday, I believe, they just put me back in the population, and they put me in E Block.

MR. O'BRIEN: Is this subsequent to --

THE COURT: (Interrupting) Mr. O'Brien, I think that we will proceed more orderly if you either object, or save your questions.

MR. O'BRIEN: I don't object, if the Court please, but I am trying to get clear as to whether this was subsequent to this February date, or prior.

THE COURT: You may have to clarify it on cross-examination.

BY MR. RICHMOND:

Q So you were in E Block on February 15th and you had been released on the 14th?

A Yes, I was in E Block, yes.

Q Now, you were in there because you didn't have a job, is that correct?

A That is correct.

Q Now, what were the conditions in E Block at that time?

A At that time, everything like you would go to, because you was idle, you could only get a half of a day of yard. You could go to the yard --

THE COURT: (Interrupting) Half a day of what?

THE WITNESS: Yard; recreation. And you would be able to go to the yard, and you go to the mess halls, right, but it was like when you were idle, you can't eat with the regular population, and you come in after the regular population, and you go to the main mess halls.

BY MR. RICHMOND:

Q But were you permitted to go to religious services?

A Yes, I was.

THE COURT: Maybe we can approach it

this way and do it a little more quickly.

What difference, if any, was there at that time between your stay in E Block, and what would have been the situation in the general population?

THE WITNESS: Oh, you are speaking of after they closed down the institution?

THE COURT: No, I am talking about when you were there because you were idle?

THE WITNESS: Well, my situation there was I was waiting for a job, and E Block is idle, and you can only go to the yard half a day, and to a movie on one day of the week, and you can't go out on the next day, right? On weekends, when they have movies. Now, this block, then, you can get your own water, and you have all of your stuff in your cell, personal property and stuff like this here.

BY MR. RICHMOND:

Q Maybe I can clear this up. What are the differences between E Block and the general population, other than the fact that you didn't have a job?

A There is no difference there.

Q Now, prior to the time that you had, as you said, had blown your job, what job did you have?

A I was working in the recreation shack and that was

maintenance.

Q And how much were you making per day there?

A I was making about 55 cents.

Q And you heard Mr. Bloeth testify as to conditions in the general population. Would your definition of the general population at the time that you were in it, were they the same, essentially the same as what Mr. Bloeth said?

A Yes.

Q Now, Mr. Suggs, can you state what, if anything, occurred on February 15th, 1973?

A Yes. It was like kind of funny, because they was going to have a show in the institution that afternoon, and I think it was that day, and we went up to lunch, and we came back from lunch, and we was laying on our cell bed waiting for the show, and the doors didn't open up. I sort of asked or called down to some of the guys and said, "What is happening that they are not opening up?" And they said, " I don't know."

And so we hear some officers downstairs saying that Mr. La Vallee, the Superintendent, has shut down all of the institution, right? And that was, what was behind it, was somebody got stabbed.

Q And had you participated in any of the incidents that

we are talking about?

A No, sir.

Q And did you witness any of them?

A No, sir.

Q How long did they keep-lock the whole institution, if you recall?

A Well, I think it continued for the next three days, until about the 19th or the 18th.

Q And what went on during that keep-lock?

A Well, during after they opened up the population again?

Q No, this is during the keep-lock of the whole institution, and what was going on?

A It was the next day, and the officers came upstairs, and they opened cells like they had about 15 officers there, right, and they were opening cells, and tell the guy to come out of his cell, right, and they make him strip down, and in front of his cell, and they would tell him to turn around, and and lift his groin, and so on, and like there, and they looked under his arms, and maybe putting the hand on the hair, and then turn around, and raise his feet, and they give you a rectal search, right, and then go in your cell, and when they went in mine, they like they nearly demolished it, and went through it, and turned

the bed upside down, and make sure I didn't have nothing in the poles, and like that.

Q And did they find anything in your cell, any prison contraband in this search?

A No.

Q And now, what happened after this keep-lock of the whole institution?

A Well, on the 19th, I believe, they started letting guys back out, right? That morning we were allowed to go to breakfast, right? And we went to breakfast, and they came back out to the block, and go to the yard, and I was told that I was locked up. So I asked the officer why I was locked up, and he said it was an "administration keep-lock" and I went in my cell.

Q Were you told anything other than it was an administrative keep-lock?

A No.

Q Now, what happened then?

A Then, a couple of days later on they started moving the guys out of the block, and I was locked in the cell, and they moved everybody off the tier except me, and I was left on the tier by myself. That is when they said that they was declaring, or what the inmates say is martial law, and he had turned "E Block" into a special housing unit, and that is when the whole place

changed around.

Q And this is E Block?

A Yes, E Block.

Q And what was it that was changed around?

A They started feeding you in a little can that looked like a garbage can, and the food was cold.

Q And where did they feed you?

A In your cell, and they throw it in a bowl, and they let you get one hour recreation in a little small yard. Since I was on a side where nobody was at, they had about three guys downstairs underneath me, and they was t he only people that I see in the yard, right? And we were trying to figure out what was happening, and I would ask the guys, or something like that, and nobody would ever answer.

Now, I had certain inmates that was feeding us, right, and he would try and talk, and he got busted talking to me, and he got locked up, and they fired him.

MR. O'BRIEN: They fired him?

THE WITNESS: They fired him off the job, and kicked him off the block, and he was feeding me.

BY MR. RICHMOND:

Q Were you permitted togo to religious services while you were in that Block?

A No.

Q And you are a Sunni-Muslim, is that correct?

A Yes.

Q And you attend religious services regularly, is that correct?

A That is correct.

Q And were you permitted to have a job or earn wages?

A No.

Q And for approximately how long were you locked in your cell each day?

A 23 hours.

Q And were you able to participate in any activities in educational or vocational programs?

A No, I wasn't allowed to do anything except only for that hour that I was to go out in the yard, and they searched you as we came out, and when we come back in.

Q And you were never told why you were in E Block, other than --

A (Interrupting) Other than that first time when the guy told me I was there for administration keep-lock.

Q And did you ever receive any formal notice from the institution?

A I received a formal notice, I think it was about 20 -- it was during or while I was in there for a while, and it was about I was temporary keep-locked, and some

rule that they had come out with about the safety of the institution.

Q I will show you this exhibit, and other than the fact that it has Mr. Guilliard's name on it instead of yours, is that essentially the notice that you received (offering)?

A Yes, that is the one.

THE COURT: What is that Exhibit number?

MR. RICHMOND: That is Exhibit No. 1.

BY MR.RICHMOND:

Q And there is nothing more specific than that?

A Nothing more specific than that.

Q And did anyone ever come to interview you or ask you questions about the February incident?

A No. I heard guys around the corner talking about that, and the head officers talking about the Superintendent and the Commissioner was walking in the block, but that was that.

Q You didn't see them?

A I didn't see them.

Q And were you ever told how long you would remain in the block?

A No.

Q And how long did you remain in the block?

A I remained there until March 12th.

Q And what happened after that?

A I was transferred to Unit 14.

Q And had everybody in the Block at that time transferred to Unit 14?

A No, I think -- I don't really believe so, because when they transferred me, I was in a tier by myself, and when they come up, they come up and took my stuff out of my cell, and taking it into the boxes, and they handcuffed me, and I went through a tunnel to the block.

Q And could you describe what Unit 14 is?

A Unit 14 is a segregation, like when you go to Unit 14, you come out of E Block, and there is a little door with a little window in it, and I don't know how thick it is, and you go in there, and all of the way through a tunnel, to an elevator, and they push the elevator door and you stand in the elevator to the back of the elevator, or face the corner, and they take you up to the unit. And when you come out, you are inside a room, a big place that looks like a baby prison, and with its own fence around it, and no other buildings around it.

Q And were you told why you were going there at any time?

A They just told me they were putting me in Unit 14.

Q And were you given a hearing before going?

A I didn't get no hearing or anything.

Q Were you given a hearing at any time while you were in Unit 14?

A No. I know that people came by, like some Commissioners and all, but they never said nothing to me. I asked the brass, and they just told me, "Sorry,we don't know what the story is on you. You are just here on administration keep-lock."

Q Now, in comparison to E Block at the time, it has been declared as a special housing unit, and what were the conditions like in Unit 14?

A Well, they start -- when you come to Unit 14, and you first come in there, they make you take off all your clothes, and then they bring out some raggedy clothes that they have got, and your pants may be up to here, and holes, and shirts like this, and then they go through another rectum search, and a strip search, and they put you in the cell like you go through this thing, and never see anybody around, and none of the inmates that you see, and two doors, and one is like a little back yard, and that is where you normally have your recreation area in the little back yard, and another lock on the door that is going in the cell when you open up the cell,

and there is a little bed there, a metal bed, that is up to the wall, and you have a unit toilet bowl, one of these things with a toilet bowl and sink combined, and when you are in there they give you a mattress and sheet, and something like this, and they give you toothpaste and a little toothbrush, and they cut off the ends, right? Then, after you are in there for a while, they let you have your legal material, and they may let you --

Q Did you have the legal material at first?

A No, they have got to get permission of the brass or somebody to give that to you.

Q How long did it take in your case? How long in your case to get the legal material?

A Well, it took about three days, because they said, like they don't know what -- anything about me, so they had to check with up front.

Q Were you allowed any of your other personal property?

A No, sir.

Q How about religious services, were you able to attend?

A I wasn't allowed -- I was not allowed to wear my tabush.

Q And what is that?

A This here (indicating an item of clothing on the head of the witness).

Q Now, were you able to see, or talk to any other inmates in 14?

A No, like you are here, and guys would be next door to you, but you never see them. And like, I think they would allow you to go out to the yard, but after the first time I went out to the yard I never went out there because they got some dude up there with these tear gas guns, and they tell you to keep on moving, and if you stop, like they get pointing the gun, and I said this is not for me, and I stayed in.

MR. O'BRIEN: I cannot hear the witness; I am sorry.

THE COURT: Read the last answer.

(The previous answer was read by the reporter.)

THE COURT: When you are in the general population, and you go out to the big yard, do they have some dudes up there with guns, too, don't they?

THE WITNESS: Yes.

BY MR. RICHMOND:

Q Now, were these tear gas guns used while you were in Unit 14?

A Yes, they was, and I was one of the people that they

were used on.

Q And could you explain about that?

A Well, they have officers up there, and all I know him is by the name of Rabidue, and he gets a kick out of wrestling with us, and he came by my cell and I am laying on the bed, and he said, "When I come by you are supposed to be standing up at the bars."

And I said, "Well, I don't know about that." Like they never told me --

Q (Interrupting) Everybody?

A No, they stopped that, and you don't have to stand up by the bars as long as they know that they can see you, right?

Q And will you explain what you mean by stand up to the bars?

A They used to have a live count, and that means that you have to stand up to the bars so that they know that your body is in the cell, and that you are alive. And so I said, "No, I didn't know about that. I was told that I didn't have to do that."

So he said, "All right,"and five minutes later he came back and he has a mask on with his little red pellet gun, and it looks like a pellet gun, and he went and sprayed me with gas.

Q Were you disciplined for refusing to obey an officer's

order or anything like that?

A No.

Q And how long did you remain in Unit 14?

A I remained in 14 until the 28th of May, and I was transferred.

Q What happened? Could you tell the Court, generally, how these events that you described affected your mental state?

A Well, it affected my mental status, and as you can see, I am a very nervous person and like, I mean after that, everywhere I went, you know, something would come up and my name would come up and they would look me up, so like this here, and recently, it just messes me around. I have been in going on seven years, and trying to get out to my family, and like that, and it just gets you jittery because if you ever watch a guy getting his brains beat in, it gets you jittery.

MR. RICHMOND: I have no further questions.

THE COURT: Cross-examination.

CROSS-EXAMINATION

BY MR. O'BRIEN:

Q Mr. Suggs, I would like to get the question clear: Were you actually employed prior to being confined to

your cell, in general population?

A Excuse me?

Q Were you employed?

THE COURT: You mean prior to being confined to Block E?

BY MR. O'BRIEN:

Q Yes.

A Before I was in Block E, yes.

Q And didn't there come a time when you were offered -- didn't you state that there came a time when you were offered a particular type of work, and you refused it?

A No; I stated this. I asked for another job, and they told me I couldn't get it. And I asked why, and I went to the box and asked why, and you can ask Lt. Keyes about that.

Q And what was the other job that you wanted?

A The job I wanted was upper H Block porter.

Q And what job did you have?

A I was a recreation maintenance -- well, in the recreation shack.

Q What were the duties of this particular job?

A The recreation shack is for the benefit of the population, and when they come to the window, they got a shack there, and they want horseshoes, or

football, or something like this here, and I issue it out.

Q And how long have you had this job in the recreation shack?

A Ever since I came to that institution.

Q And was that located in E Block?

A What?

Q Is this recreation shack located in E Block?

A No, it was located in the yard.

THE COURT: Weren't you -- didn't you tell us that you were in E Block because you were idle?

THE WITNESS: Right. When you come out of Unit 14, right, and if they take your job, you have got to go to E Block, because you are idle.

THE COURT: But you didn't come from Unit 14 to E Block, did you?

THE WITNESS: I left H Block to Unit 14.

BY MR. O'BRIEN:

Q And H Block was general population, was it not?

A Right.

THE COURT: Now, where did you get in E Block?

THE WITNESS: Because I didn't have no

job.

THE COURT: That is what I think that Counsel is trying to make a point on, and that is what he is asking about. The time that you entered E Block, you didn't have a job?

THE WITNESS: Right.

THE COURT: All right. Listen to the question, and then answer them.

BY MR. O'BRIEN:

Q Didn't you testify that in January you went to Unit 14?

A January?

Q Or prior to February. Prior to February of 1973 where had you been? Was it in Unit 14?

A He asked me where did I work at before I was in E Block, and I said I was in H Block, and I went to the box, because I lost -- I "cracked" for another job.

Q I didn't understand that.

A Well -- excuse me, you see, like I don't know too many big words.

THE COURT: You talk in small words, and we will understand that better.

THE WITNESS: I said that the attorney there asked me about why did I lose my job, and why was I in E Block, and I said because before I was in E Block, before the 15th, I was in Unit 14, for the

simple reason that I asked for a new job, and I don't know exactly which day it was that I went to Unit 14, or what month, but it was between the beginning of February and the ending of January.

Q Were you, during the month of January 1973, requested to move to take on a new assignment?

A I don't recall.

Q Would you say that you weren't? Do you state that that is not the case?

A I don't recall the situation.

Q Were you placed in Special Housing Unit 14 for seven days in January of 1973?

A I was placed in, as I said, I was placed in Unit 14 Special Housing for seven days on a recall, but I don't know exactly what date it was. I don't recall.

Q And after you were recalled, weren't you placed on the idle status?

A Yes.

Q And didn't you remain on idle status until February of 19 -- February 15th of 1973?

A Yes.

Q Mr. Suggs, were you at any time stationed at Green Haven Correctional Facility?

A Yes.

Q And how long were you there?

A For about two years -- for about two years.

Q And did you have any disciplinary problems down there?

MR. RICHMOND: Objection, your Honor. I don't understand the relevancy of any prior disciplinary problems there.

THE COURT: I think that that is a factor that can be considered. I will let him answer it.

THE WITNESS: Yes. I had a little difficulty there.

Q And can you tell us about them?

A No. Really, like you know, it was so many, what you would call miscellaneous keep-locks, that I don't recall them.

Q Did you work in the Metal Shop No. 2 at Green Haven?

A I didn't know Green Haven had a metal shop.

Q Did you know a Captain Smith at Green Haven? Captain Smith?

A No, I don't know nobody by that name.

Q When did you arrive at Clinton Correctional Facility?

A I think it was in May of 1972 or 1973 -- no, I think it was May of 1972, the 13th.

Q And you came from Green Haven, is that right?

A Right, right.

Q And how long -- when did you leave Clinton?

A I left Clinton on March -- I think it was March of 1973.

Q And was that to go to ACTEC?

A Right.

Q Were you also transferred to ACTEC?

A Yes.

MR. O'BRIEN: That is all.

THE COURT: Anything further?

MR. RICHMOND: No.

THE COURT: You are excused.

(Whereupon the witness was excused.)

THE COURT: Before we start another witness, I think it is a good time to take a short recess.

THE CLERK: The Court will stand for a short recess.

(After a short recess, the trial was resumed.)

MR. RICHMOND: Mr. Englander will question this witness.

We would like to call Mr. Raymond Guilliard.

RAYMOND GUILLIARD, called as a witness, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. ENGLANDER:

Q Mr. Guilliard, where are you presently confined at?

A Comstock Correctional Facility.

Q And what crime are you presently serving a sentence for?

A Rape, robbery, assault, burglary, and grand larceny.

Q And you were sentenced for what?

A 20 to 30, concurrently, 1946.

Q And what are the convictions, or do you have any other convictions?

A '61, I believe it is, five years for attempted robbery. And in 1966, an altercation with my brother, I believe it was, and assault, and that was five months.

Q And where were you confined on February 13th of 1973?

A Clinton Correctional Facility, "H" Block.

Q And H Block, what part of the facility is that?

A That faces the big yard.

Q Is that a special housing unit?

A No.

Q General population?

A General population.

Q And could you tell me generally the conditions of your confinement, and why you were in H Block, and how long in the cell each day?

A I had the privileges that the normal population have. I went to the movie, and the commissary, and church services, and I had access to the yard, and the facilities of the yard. I was out of there maybe on an average of about six or seven hours a day.

Q And like the other plaintiffs, you ate your meals in the mess hall?

A Yes.

Q Now, in terms of recreation, what was the yard like?

A They had -- they was trying to have a bobsled run, and a little ski jump, and ice skating, and snowballing, and football until they told you to stop. You know, just general enjoyment and recreation.

Q And how large was that yard, the yard used by the general population?

A Oh, it is -- huge. Three layers of it. One on the hill with the handball courts, and they had private courts, where you go in a little group of people, and flat where you played baseball, and football,

and stuff.

Q And you say in terms of entertainment what forms of entertainment were you permitted to attend?

A Movies, and plays that were coming in.

Q What do you mean by that?

A They had a theater that comes into the institution, and they have this group that puts on plays, and skits, and that is about it.

Q And in terms of personal hygiene, how often were you permitted to shower and shave?

A You was permitted -- I can have access to hot water, and you can have it in H Block, and you can shave as often as you like. If you had an electric razor, that is even better. Showers once a week.

Q And in terms of reading material that you are permitted to have?

A You can have anything that is in the library, or anything that is allowed in the institution. There is no limitation as to what you can have.

Q Did you have your own personal books?

A Yes, and law books, and my own personal library.

Q And law books, and fiction and non-fiction?

A Right, right.

Q And during the period that you were in the general population, were you employed?

A Yes. I was the head mechanic, and we had a weave shop, making institutional gray pants, and shirts, and material, and things like that.

Q And how much were you receiving in wages?

A A dollar a day.

Q And were there any other educational or vocational classes that you attended?

A I was in the music theory, and I was trying to be a musician, too.

Q Do you play an instrument?

A A saxophone.

Q And were you permitted to play the saxophone?

A Yes.

Q And were you permitted to have a saxophone in your cell?

A Yes.

Q And did something occur when --

THE COURT: Excuse me, but did you say you did have a saxophone?

THE WITNESS: Yes.

THE COURT: And you played in your cell in H Block?

THE WITNESS: Right.

THE COURT: All right.

BY MR. ENGLANDER:

Q Did anything occur on the 15th of February that resulted in certain restrictions being placed on you and the other inmates in the facility?

A There was a general closedown of the facility. They shook down.

Q And in terms of the closedown what happened to your ability to move freely about the institution?

A You was keep-locked. The whole institution was locked up and no movement.

Q And did you, if you know, what was the reason for this general keep-lock?

A Well, at this particular time I didn't know. I came to find out later what it was all about, but at this time I didn't know.

Q What did you find out?

A They said there was some stabbings, on two consecutive days, the 14th and the 15th, or something like that, in another part of the facility.

Q Did you participate in any of these fights?

A No.

Q Did you know any of the participants?

A No.

Q Do you know how long the prison population remained in the keep-lock status?

A It wasn't -- they was a gradual relaxing of the keep-lock status, and in other words, maybe 45 minutes in the yard.

Q And you said that originally that you were keep-locked virtually all day, is that correct?

A That lasted for about two or three days.

Q And then what happened?

A Then this was a gradual cutback of that type of keep-lock, and they let you out in the yard for about 45 minutes.

Q Going back for just a moment to the two or three days that you were locked in your cell, you mentioned something about a general search?

A Yes. They came to your cell and asked you to step out and asked you to strip, and go to the rectal searches, and they tear up the cell.

Q And did they find anything in your cell?

A They didn't take anything out of my cell.

Q Did they take anything off of you personally?

A No, nothing off of me personally.

Q And during the period after these two or three days that things began easing up, can you tell us in what respect things began easing up?

A Well, you was allowed to go to the yard about 45 minutes, to the yard. They were letting porters out

and feeders out, and some people to go to some of the shops.

Q And where were you eating your meals during that period?

A In the mess hall.

Q Now, how long did you remain in the general population?

A I believe it was from the 15th to the 19th or the 20th.

Q And what occurred at that time?

A I put my name down to go to the yard, which is a normal procedure, and I was told I was in keep-lock.

Q Could you tell us what kind of a unit keep-lock is?

A Keep-lock is a --

Q (Interrupting) E Block, I mean, I am sorry.

A Well, E Block is just a segregated facility, and enclosed, and away from everybody else. No one outside has any access to it. You can't leave it without being escorted. While I, myself, was housed in there, you only had, under the discretion of the officer in charge, as to the amount of recreation privileges that you enjoy, like walking around in the yard, and if you did go to the yard, you had to be subjected to searches going and coming, and while in the yard there were certain restrictions.

Q Who told you that you had to go to E Block?

A Nobody told me. They told me I was under keep-lock, and they told me to pack up, and they moved me to

E Block. I didn't know whether actually where I was, until I was there.

Q And did they tell you where?

A No.

Q Did you ask them why?

A Yes, I asked them why, and they told me that somebody would be there to talk to me about this.

Q And after you were there, did there ever come a thing that you were ever told a reason why you were placed in E Block?

A No, I was never, never told verbally by any official, or any person up there. I was given a slip of paper stating as to why I was supposed to be in there.

Q I show you Plaintiff's Exhibit No. 1 and ask you if that is what you received?

A Yes, this is a paper that I received on February 23rd.

Q February 23rd was about three days before or three days after --

A After being in E Block.

Q How many men were taken to E Block? Or were you the only one?

A I was the only one taken from my gallery at one particular time. When I arrived there, this whole block was full. There was a whole block filled.

Q And approximately how many men would that be?

A Maybe about 200 -- about 200 at the most. Somewheres in that --

Q And on Plaintiff Exhibit 1, did you know if any of these other men received a similar document?

A I haven't seen them received, but the Sergeant that brought it around did have some in his possession, other sheets of paper, and he was just giving them out.

Q You wouldn't have any idea as to approximately how many men?

A No, there was quite a number of them. Maybe 50 or 60, or so.

Q And were you ever told how long you were going to have to remain in E Block?

A No, sir.

Q Now, as to the conditions in E Block: Where were you permitted to eat your meals?

A I ate in my cell.

Q And recreation?

A If the weather wasn't too severe, and this being February, you was allowed to go out in the yard.

Q And for about how long?

A At the discretion of the officers.

Q And so approximately then how many hours a day did you remain in your cell?

A 23.

Q And various entertainment that you had been able to attend in the general population, you were unable to attend it?

A No, you forget all privileges when you are in E Block.

Q And when you say privileges, would that include religious services?

A Religious services, movies, recreation, and so forth. There wasn't no church services. And at the commisary, I have no idea about that.

Q What about your job?

A No, because you can't leave the block.

Q And how about the music program?

A No, you forget that, too.

Q And what limitations were there placed on you again in terms of your ability to socialize with other men?

A Well, very severe, and you couldn't,as I say, the only time we had an opportunity to meet and mingle with anyone was in that yard.

Q And finally, with regard to these conditions, what about the property that you were permitted to have in E Block?

A Well, you can have almost anything that you had, or a majority of the things that you had in the general population. But there was a few examples, like you couldn't have any wood in your cell for

shelves, and you couldn't have the floor coverings, and the linoleum in the floor of your cell; at least I couldn't, anyway.

Q And what happened to those items of your property?

A They took them. They took them.

Q At any time after did you receive a hearing in E Block, or prior or regard to the events of February 15th, generally?

A None.

Q Did you ever get any more specific reason as to why you were in E Block, other than the information that is in Plaintiff's Exhibit 1?

A No.

Q Did anyone at any time come to interview you while you were in E Block?

A No official from the facility came to interview me. There was an Assemblyman Arthur Eve, and what do you call them? Are they Coordinators, or Associates, and they came and interviewed us about this, and so forth.

Q And did you have a discussion with any of them?

A Right.

Q And what was the contents of that?

A He asked me if I knew anything about the stabbing -- not Arthur Eve, but his coordinator or associate,

and he asked me whether I was involved in it, and had anything to do with it, and he seemed to lose interest with me when I said no.

Q And did you meet with anybody else?

A No one.

Q And anyone from Albany?

A No one in that E Block.

Q Now, how long did you remain in E Block?

A From the 19th or the 20th of February until about the 15th or 16th of March.

Q And what happened at that time?

A I was handcuffed and taken to the box.

Q Do you know how many people were transferred along with you to the box?

A No, I really don't.

Q Well, was the entire block of men who were incarcerated in E. Block, were they on Unit 14?

A I would like to say that allthe while I was housed in E Block there was transfers going out to different facilities, and Auburn, and Green Haven, and so forth and so on. I was, oh, the only one that I know of that I went alone to E Block.

Q Had you ever been to Unit 14 prior to this particular time?

A No, no. Not that I can recall. You know, offhand.

Q And can you tell me what is Unit 14?

A A punitive segregation.

Q And what do you mean by that?

A For people who are troublemakers in the population, and people that assault officers, or assault other inmates.

Q Let us say if one assaults another officer, what happens? Will he be taken to Unit 14?

A No, he would be placed in his cell -- yes, placed in his cell, or probably a hospital -- he would be placed in his cell until he is taken to where they recommend him for Superintendent proceedings, and after Superintendent proceedings he would go to punitive segregation.

Q And would he receive -- would such an individual receive any notices of charges against him?

A Yes, he would receive a charge sheet, what they call the affidavit of investigation, and he could receive a counsellor, who is supposed to be his attorney, to represent him at the Superintendent proceedings.

And after the completion of it, he would receive a sentence, and you know, his notification, and so forth.

Q And did you receive any of these procedures?

A None, none.

Q And were you ever told why you were going to Unit 14?

A No.

Q And any comparison to E Block? What were the conditions like in Unit 14? Would you describe your general cell?

A Well, it was a cell, and it was large, at any rate, but they was filthy. You was given a sheet, with holes, and blankets and things like that. You was given a metal commode to use, with a sink attached to it.

Q Let's talk to the bedding for a minute. What kind of bedding did you have in E Block?

A You had a regular bed, a regular bed with springs, a mattress, and our own personal sheets, and pillow cases and what have you, and a blanket.

Q In Unit 14?

A You didn't have these things.

Q And as to personal property, what personal property were you permitted to have?

A No metal objects, and anything that the institution or people in unit 14 can, you know, construe as being a weapon, you are not allowed to have it. Toothbrush has been testified to before, that was cut in half.

Q And what do you mean by cut in half?

A They only used maybe about an inch, or an inch and a

half, and just the bristles, and maybe a quarter of an inch beyond the bristles. They said it was a weapon, and you could sharpen it up.

Q And what about recreation?

A While I was in Unit 14, I didn't get any recreation.

Q Would you have taken recreation?

A Yes, I would.

Q And were you told why?

A No, I was not.

Q Was there any difference in the search procedures in Unit 14 than in the general population, or in E Block?

A Well, yes. Yes, and no. Because I think that I said before that, during the search that they had, you had a strip search, and in Unit 14, it is mandatory that people leaving or going, or whatever the occasion may be, you must -- in fact, if you don't get a search, you don't get the visit, or what have you.

Q Did you have any visits?

A Yes, I had an attorney visit.

Q And were you strip-searched?

A Yes. Yes, I was strip-searched.

Q Going and coming?

A Yes, going and coming.

Q How long did you remain in the box in Unit 14?

A From, I think it was the 14th or the 15th to about

the 27th, or the 28th of March.

Q And what happened at that time?

A I was transferred out of the institution.

Q Could you tell the Court, Mr. Guilliard, generally how the events following February 15th affected your outlook?

A Well, for me, it was very depressing. I looked forward to this year, and put this on the record, and I don't see any remote possibility of being released, and that is a hardship.

Q Now, this supposed investigation and events, and the circumstances that you found yourself in, have those been affecting you in any way in your relationship with prison authorities since that time?

A Yes, yes. After being sent to another program, or another institution, I was brought back to Clinton, and in September of that same year, I was --

Q (Interrupting) When is that?

A 1973. I was placed under keep-lock, and sent to the Attica Facility and placed in the box in Attica.

Q And how long did you remain in the box in Attica?

A Until --

MR. O'BRIEN: (Interrupting) I am going to object to this. I don't think that there is anything in the pleadings here to go beyond March 27th.

THE COURT: Sustained.

BY MR. ENGLANDER:

Q May I ask one further question. Were you told that the action of the prison authorities were in any way related back to the events at Clinton?

A Yes, I was informed that because of my prior involvement --

MR. O'BRIEN: (Interrupting) I am going to object.

THE COURT: Sustained.

MR. O'BRIEN: Unless proper foundation is laid.

THE COURT: Sustained. I will not try the man's whole life. I will only try the period --

MR. ENGLANDER: (Interrupting) Then I have no further questions of Mr. Guilliard at this time.

THE COURT: All right.

Mr. Guilliard, in relation to the search in Unit 14, you testified that any time you left the unit it was necessary for you to submit to a strip-search?

THE WITNESS: Right.

THE COURT: Now, what about in the

general population?

THE WITNESS: No, no. You just go.

THE COURT: And there is no requirement at all?

THE WITNESS: No.

THE COURT: All right. Cross-examination.

CROSS-EXAMINATION

BY MR. O'BRIEN:

Q Mr. Guilliard, did I understand you to say that you did not take any exercise while you were in Unit 14?

A No exercise. I wasn't allowed to exercise.

Q Were you refused exercise, or did you decline it?

A I asked for it, and never received it.

THE COURT: When you asked for exercise, just what did you request, and from whom did you request it?

THE WITNESS: I was taken before the Adjustment Committee for something about yelling and screaming out of my cell, and some other --

THE COURT: What?

THE WITNESS: For yelling and screaming from out of my cell, and something of that nature, and I asked them as to why I didn't get any recreation, and yard privileges, and they never told me. They just

gave me seven days for yelling and screaming, and something else, and I don't know what it was.

BY MR. O'BRIEN:

Q Did they advise you that you were being keep-locked because of a disciplinary problem?

A I don't understand what you mean. You mean coming into the box?

Q No, when you met with the Committee, the Adjustment Committee.

A Yes, they did. Yes, they did.

Q You were in Unit 14 on March 13th, were you not?

A March 13th?

Q 1973?

A I don't believe so.

Q You were not in Unit 14?

MR. ENGLANDER: Objection. Again, we are talking about now, March 13, 1973.

BY MR. O'BRIEN:

Q Yes, 1973?

A When did I go to Unit 14? I am trying to remember it.

Q Do you know what the log book is that they keep in segregation?

A Yes.

Q Do you recognize this (indicating)?

A Yes.

Q And do you know that this log book states that --

MR. ENGLANDER: Objection, your Honor.

THE COURT: I haven't heard the question yet. Have you?

BY MR. O'BRIEN:

Q Do you know that that log book states that on March 13th, exercise in the yard was given to the following who went to the big yard: Jones, Suggs, Bloeth, and Guilliard?

MR. ENGLANDER: I have to object. How would he know what was in the log book?

THE COURT: I don't know, but I will let him answer the question to find out. Overruled.

BY MR. O'BRIEN:

Q Do you know it states that?

A No, I don't.

Q Would you say that if it states that it is a mistake?

A I would say it was.

Q And you were in Unit 14 on the 14th of March?

A I was taken to Unit 14 on the 15th of March -- yes, I was there on the 14th, yes.

Q And do you know that the log book for Unit 14 states the following to the big yard: Suggs, Bloeth, Guilliard, Sickes, Schumondalay, and Moga? Do you

know that it states that?

A I have no idea about that.

MR. ENGLANDER: If Mr. O'Brien wants to read that into the record?

MR. O'BRIEN: This is merely cross-examination.

THE COURT: This is merely evidence of whether or not the witness knows. It is not evidence of the contents, by any means. I suppose that if you want the contents of it in evidence, Mr. O'Brien will do it during his case. Overruled.

I merely explained my ruling to anticipate future objections along the same line.

BY MR. O'BRIEN:

Q Would that be another misstatement that was entered in the log book when it so states that you went to the big yard?

A Could I ask a -- could I inquire, what date was that?

Q March the 14th.

A What date?

Q 1973.

A I am trying to find out what date does it state in the log book, that I arrived at Unit 14?

THE COURT: You don't need a lawyer, you are doing pretty well yourself.

BY MR. O'BRIEN:

Q The first entry, in answer to your question, the first entry in the log book where your name appears is on March 12th.

A March 12th. And I have some papers over here, and I believe it was the 15th I went there.

Q So that the log book is wrong when it states that you were in Unit 14 on March 12th, too?

A May I see my papers?

Q I am asking you the questions.

THE COURT: Just a minute. You will have an opportunity, or your lawyer will, on redirect examination. So you just answer the questions, and if you don't know the answer, say so, and if you do, say so.

THE WITNESS: I think that the log book is incorrect. I am not sure.

BY MR. O'BRIEN:

Q If the log book stated that you went out in the big yard on the 15th, it would be incorrect, too?

A On the 15th I was in the box at that time.

Q No, you say the box, and that means Unit 14?

A Yes, Unit 14. Is that the log book of Unit 14?

Q Yes, that is right. What I have in my hand here is, yes.

A All right.

Q So that as I understand it, on your direct testimony, you said that at no time while you were in Unit 14 did you receive any exercise?

A That is what I am saying.

Q So that I conclude from that answer that what you are saying was that you never went out into the big yard for exercise.

A Yes. And I am also stating that I don't believe I was in Unit 14 on the 12th.

Q Or the 13th?

A Right.

Q Or the 14th?

A Perhaps on the 14th or the 15th. I am quite sure of the 15th, I believe.

Q Well, at any time when you were in Unit 14 did you go out into the big yard?

A I stated that I have never had any recreation in Unit 14, never.

Q And it was because it was deprived of you, or that you declined it?

A When I came to Unit 14, I didn't have any recreation --

THE COURT: (Interrupting) Let me put it to you another way. At any time while you were in Unit 14 did you go out in the yard for any purpose?

THE WITNESS: No.

THE COURT: All right.

BY MR. O'BRIEN:

Q Could you have gone out into the yard?

A Before going to the Adjustment Committee, yes, I could.

Q Now, Mr. Guilliard, you were employed in the weave shop?

A Yes, I was.

Q Up until what date?

A About January, sometime. Sometime in January. I don't know the date.

Q And what happened in January that terminated this inquiry?

A They was closing down the weave shop, and they moved some of the inmates that worked in there to C Block, -- from C Block to H Block.

Q And what were you doing from that time on?

A At that time I was in the Reception H Block.

Q And is this the same as idle?

A That is not the same. That is reception, and that is where you are waiting for employment.

Q And do you know a man by the name of Mr. Leach?

A Yes, he is the shop foreman.

Q And did he, on February 5th, change your position of employment to that of unemployed and state that you

were doing insufficient work?

A What is that that you have in your hand?

Q I am asking you a question.

THE COURT: You just answer the questions. Your attorney will take care of that.

THE WITNESS: No, I wasn't aware of that. All I know is that I was moved from C Block to H Block.

BY MR. O'BRIEN:

Q And did Mr. Leach have anything to do with the termination of your employment?

A I have no idea. He is the shop foreman. I have no idea.

Q And could he have had something to do with it?

A Being the shop foreman, perhaps he could have. I have no idea.

Q What do you do in Reception?

A Well, you go to yard, all day, and yard in the morning, and yard in the afternoon.

Q Do you work?

A No, you was unemployed until you get employment.

MR. O'BRIEN: O.K. I think that is all I have.

MR. ENGLANDER: I have no further questions, your Honor.

THE COURT: Thank you.

(Whereupon the witness was excused.)

MR. ENGLANDER: At this time, I do have a number of documents and some testimony from the deposition that I would like to read into the record.

First, I would like to offer Chapter V of the New York State Code of Rules and Regulations covering disciplinary procedures.

THE COURT: All right. Show it to Counsel, please.

To save time, I will take judicial notice of Chapter V.

MR. O'BRIEN: I have no questions on that.

THE CLERK: Plaintiff's Exhibit No. 2 marked for identification.

THE COURT: If there is no objection, it is received, and subject to any amendment that there might be -- I assume that it is current?

MR. ENGLANDER: Well, this was the one that was in effect at the time in 1973.

THE COURT: All right, it is received.

THE CLERK: Received.

(Plaintiff's Exhibit No. 2 received in evidence.)

MR. ENGLANDER: And since the defendants

have denied the responsibility of themselves for the disciplinary procedures at the institution, I would ask your Honor to take judicial notice of Section 112 of the Corrections Law, which spells out the Commissioner's responsibility with regard to discipline at the institution, and I would also like --

THE COURT: (Interrupting) The Corrections Law is a general law.

MR. ENGLANDER: And I would like to read from the deposition of Edwin L. La Vallee, defendant, in the case of --

MR. O'BRIEN: (Interrupting) If the Court please, this is not a deposition that was taken in connection with this lawsuit, and I object to it.

THE COURT: That is apparent. What is the authority for using a deposition taken at another time?

MR. ENGLANDER: Well, it is twofold. First would be the fact that these are clearly admissions of --

THE COURT: It is the deposition for the purpose of the other case.

MR. ENGLANDER: I believe that the new rules governing evidence state that a deposition --

THE COURT: (Interrupting) But the new

rules governing the evidence are not in effect, are they?

MR. ENGLANDER: That is correct, but I believe that --

THE COURT: (Interrupting) Do you want me to get ahead of the times?

MR. ENGLANDER: They are soon to go into effect, and Mr. O'Brien was the Counsel in this case, and our office represented the plaintiffs in this case, and the issues -- the deposition was, in fact, conducted on March 22nd of 1973, so it is right there during the period, and the issues are identical.

MR. O'BRIEN: I object to this, if the Court please. This is an entirely different lawsuit, and different parties.

This involves another person and I don't even know what is involved here. I just think that on general principles of law this is highly irregular, and illegal.

THE COURT: I don't think that I have any right to apply a rule of evidence that is not in force.

Under the present rules of civil procedures, my understanding is that the deposition can be used for any purpose in the case.

MR. ENGLANDER: It simply says for any purpose, and this is a deposition of a party, and not of a witness.

THE COURT: I understand that. No. I don't know just how necessary it is. There is an Exhibit 1 in evidence, which seems to me to indicate a responsibility, and I don't think that I could draw any inferences on the closedown of a complete institution without attributing knowledge to the Superintendent.

While I am not making that finding, because I am not making any findings, it seems to me that you may be pressing too hard.

MR. ENGLANDER: Well, we are not relying upon this deposition for the only basis of Mr. La Vallee's involvement. There was plaintiff's Exhibit 1, but I would like to read just briefly from Wigmore, on Evidence, in which he stated that what would be sufficient to inquire whether the testimony was given upon such an issue that the party opponent in that case had the same interest and motive that the present opponent has.

THE COURT: I did not hear that case, and I cannot pretend to have sufficient knowledge to even bring the Wigmore ruling in.

MR. ENGLANDER: I believe that just a reading of it would make apparent the relationship to the issue here. The questions are identical, and specifically the very issues that are involved today.

THE COURT: You have offered it, and I have sustained the objection.

MR. ENGLANDER: That concludes plaintiffs' presentation.

THE COURT: The plaintiff rests.

MR. O'BRIEN: If the Court please, at this time I would request that my next witness be permitted to testify in the morning. I thought he might be here now, but I do not see him in the courtroom. He did his best to get here by now, but he will be here tonight and will be ready first thing in the morning.

THE COURT: Well, the plaintiff rests, and we will have to go over, it is obvious to me, until tomorrow morning anyway. But how long will you be on the defendant's case?

MR. O'BRIEN: I would say my witness, who is Deputy Superintendent Gard, would probably take about an hour, depending on the length of the cross-examination that he is subjected to.

THE COURT: So that we will, in all likelihood, complete the case tomorrow?

MR. O'BRIEN: We certainly should, as far as I am concerned.

MR. RICHMOND: It is apparent, and I believe that we will want to call Superintendent La Vallee on our rebuttal case, as a defendant in this action.

THE COURT: Can you see that the Superintendent is here?

MR. O'BRIEN: Superintendent La Vallee?

THE COURT: As part of the rebuttal.

MR. O'BRIEN: He is on a vacation, and I don't know his whereabouts, and I don't know if he is out of the country, or out of the State, but he is on a week's vacation, and he won't be back until the 14th.

THE COURT: Well, under the circumstances, this is a non-jury case, and if, after the defendants pleads his case, if the plaintiff feels that it is essential to their case, and that they need the Superintendent as a rebuttal witness, I will recess the case to give them an opportunity, but I think there is an important question involved here that should be decided on on a full record.

MR. RICHMOND: Thank you, your Honor.

MR. O'BRIEN: I would appreciate it if I could have the same opportunity in the event that I wish to call any additional witnesses in surrebuttal.

THE COURT: Well, there has got to be a limit on this. I start jury cases in May, and I have got a little homework to do. I think that you can anticipate the rebuttal witness is an officer -- as a matter of fact, he is a defendant. He is your client.

MR. O'BRIEN: That is right.

THE COURT: And I think that you ought to be able to ascertain whether or not you are going to need anything to contradict your own client.

MR. O'BRIEN: Well, I was thinking of them putting on witnesses aside from Superintendent La Vallee.

THE COURT: Well, your case starts tomorrow, and if you have anything to put in by way of defense, of course, tomorrow is the time to put it in.

Now, I do not see any need to have the plaintiffs here beyond today.

MR. RICHMOND: Your Honor, they have been helpful to us in the presentation of this lawsuit.

THE COURT: I am sure that they probably

have been, and I am sure that you have had an opportunity to consult with them at length now, and the issues are pretty confined after the opening here. If the testimony should develop that, as I have indicated, that it is necessary to have further rebuttal, why I can consider it at that time, but I see no need -- Marshal, you can take them back to the institution, can't you?

THE MARSHAL: Yes, arrangements can be made, Judge.

MR. RICHMOND: I am not even sure that they want to attend any subsequent proceedings, but I would like an opportunity to discuss that with them.

THE COURT: Well, they may not want to attend. I would say that a natural inclination would be to want to attend, and I would say it is pleasanter here than the other surroundings, but that isn't the purpose of having them here, unfortunately.

MR. RICHMOND: Are you speaking of returning them tonight, or for subsequent proceedings with Superintendent La Vallee?

THE COURT: I am not looking that far ahead. These people belong in State custody, and that is the point.

MR. RICHMOND: I understand that. They are staying presently at the County Jail, and they do want to stay just through tomorrow. They have all of their property there, and they would like to attend tomorrow's proceedings.

THE COURT: Let me talk to the Marshal.

(The Court conferred with the Marshal out of the hearing of the people present.)

THE COURT: After discussing the matter with the Marshal, I think it is Plaintiff Bloeth that is here in Auburn. Now, they can go right down the street, and return to Auburn, and the writ will continue until tomorrow, and bring them back out of the institution tomorrow, and the Marshal is directed to return them to the institution tonight, and to produce them here in the courtroom pursuant to the writ already granted.

The other two plaintiffs the Marshal is directed to return to court tomorrow morning, and I will see what develops then.

MR. RICHMOND: Thank you.

THE COURT: Plaintiff's property, I assume they had some personal belongings at the jail, and if so I will direct that you bring them with you tomorrow because you will in all probability leave right from

here to go back to the State institution.

All right, we will stand in recess until 10 o'clock tomorrow morning.

THE CLERK: Court stands in recess until 10 o'clock tomorrow morning.

(Whereupon, the Court recessed at 4:45 p.m., until 10:00 a.m. the following morning.)

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF NEW YORK

----------X

RAYMOND GUILLIARD, FRANCIS BLOETH and JOHN SUGGS,

Plaintiffs,

-against- 73-CV-249

PETER PREISER, Commissioner of Correctional Services; RUSSELL G. OSWALD, Commissioner of Correctional Services; and EDWIN LA VALLEE, Superintendent, Clinton Correctional Facility,

Defendants.

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PROCEEDINGS in the above-entitled matter continued from April 7, 1975 before the Honorable Edmund Port, United States District Judge, Presiding.

APPEARANCES:

WARREN RICHMOND, ESQ.,
and DAVID ENGLANDER, ESQ.,
Attorneys for Plaintiffs.

THE HONORABLE LOUIS J. LEFKOWITZ, Attorney General,
The State of New York,
BY: TIMOTHY O'BRIEN, Assistant Attorney General,
Attorney for Defendants.

THE COURT: Proceed.

MR. RICHMOND: At this time I would like to make a motion to sequester any other witnesses.

MR. O'BRIEN: No, there are none.

MR. RICHMOND: I would like to sequester them.

THE COURT: He says there are none.

MR. RICHMOND: He said that he might be calling Lieutenant Hoy, and is it then Mr. O'Brien's intention not to call Lieutenant Hoy at any time?

MR. O'BRIEN: I have already stated that there would be no other witnesses.

THE COURT: I thought that was your statement.

WILLIAM GARD, called as a witness, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. O'BRIEN:

Q Your name is William Gard?

A Yes.

Q And you are presently Deputy Superintendent in charge of Security at Clinton Correctional Facility?

A Yes, sir.

Q And for how long a period of time have you had that position?

A I was appointed to that position in November of 1972.

Q Now, can you give us briefly a short history of your experience in correctional work? When were you first employed in correctional work?

A I was originally appointed as a corrections officer in October of 1950, and I held that position until April of 1960 when I was appointed Corrections Sergeant, and in 1967 I was made a Corrections Lieutenant, and in 1970 a Corrections Captain.

Q And during these periods that you have mentioned, at what facilities were you assigned?

A I was at the Woodbourne Correctional Facility as a Corrections Officer from 1950 to 1955. Then I went to Auburn Correctional Facility as a Corrections Officer until 1960. In 1960 I was appointed Corrections Sergeant at Auburn; in 1967 I was appointed Corrections Lieutenant at Ossining. In 1970 Corrections Captain at Ossining, and in 1972 I was promoted to Deputy Superintendent at Clinton.

Q Will you describe generally the duties of Deputy Superintendent for Security at Clinton Correctional Facility?

A Under the direction of the Superintendent, I am

responsible for the security of the facility and for the safety and well-being of all inmates and employees. That is a general statement.

Q And do you recall the month of February of 1973?

A Yes, I do.

Q And during that month did anything of an unusual nature occur at Clinton Correctional Facility?

A On February 15th of 1973 it became necessary to close down the facility, that is, to leave all inmates locked in their cells, except for very minimum work forces. This came about at approximately noon on that day, after there had been several assaults that morning. And after having been apprehensive for several days and as long as three or four weeks, that we had difficulty in the facility, there was an atmosphere of unusual contention.

Q Did anything occur?

A Within the place?

Q Did anything occur in the month of January that had anything to do with this situation?

A There had been a series of assaults on January 25th --

Q (Interrupting) Did you say a series?

A A series. That generated considerable unrest and contention within the place.

Q Now, this situation that existed the morning of

February 15th, these series of assaults, could you enlarge upon that to some extent and describe for the Court who was involved, and whether or not anyone was injured seriously?

A I would have to refer to my records to give you an accurate statement.

Q What particular records do you have to refer to?

A There were five inmates that were injured, four by direct assault, and one was treated for an injury as a result of the assault, that had not been assaulted himself.

At least two of the assaulted people were so seriously injured that they had to be taken from the facility and be treated at the Champlain Valley Physicians' Hospital at Plattsburgh, New York.

Q Now, this decision to close down the facility, who was involved in making that decision?

A The final decision was made by the Superintendent, but there were probably a great many people involved. I made the recommendation, one for one, that we should close down, and I thought that we were in a very serious situation.

Q Now, what did you base your recommendation to the Superintendent upon?

A There had been discussions previously, many discussions

previously to that morning that we had an obvious -- an obviously unusual situation in the prison. There was -- that there were reports coming in to my office from employees, and from inmates, expressing their apprehension, and some of them even went so far as to say that we are going to have another Attica here any day.

Q Now, were these written reports, or were they oral reports, or both?

A They were mostly oral reports.

Q And these were brought to you by Corrections Officers?

A Not only by Corrections Officers, but by inmates, by the custodial employees, that it was evident that a great many people were feeling very apprehensive about our situation at that time. They were fearful that we were going to have a serious disturbance.

Q And for approximately how long a period of time, prior to the 15th of February, was this type of information being funneled into your office?

A I believe the first reports started coming in after the January 25th assault. The flow of information gradually increased daily. Apprehensions were raising, and the morning of the 15th, when we had these assault incidents, it became a flow of information then, and it was opening the flood gates and everyone was talking.

Now, you have testified that on the 15th of February the Superintendent directed that the facility be closed down, I believe?

A Yes.

Q Would you explain to the Court exactly what that term "closed down" means?

A It means that all programs cease. We go into an emergency-type program, where all inmates are retained in their cells. There are some, some immediate evaluations of inmates, and this screening is done so that the essential services can continue. By that I mean, that we had inmates out to work in the hospital for medical services, in the kitchen, and in the hospital for food services, and in the maintenance departments, to maintain essential plant operations. But you are limiting inmate movement to an absolute minimum.

Q Now, what steps, if any, did you take for the purpose of investigating these series of assaults, or for investigating the atmosphere or tension, as you have testified, that existed at the facility?

A The assault incidents, themselves, were investigated by the New York State Police, and by the Clinton County District Attorney's office. We of the facility staff aided them in any way we could, but

the investigation of the assaults, per se, was essentially theirs.

The atmosphere within the facility, the tensions, the apprehensions, we established an office in the Administration Building to -- that was staffed to receive information, and list it, and have certain information sent back for further investigation.

Q Was a search conducted of the facility for any purpose?

A Yes.

Q And can you describe what was the purpose of this search?

A The entire facility was searched. Among the other items of information that we were receiving was that there was a large number of inmates that were armed with home-made weapons and this search of the facility was for the purpose of discovery of these weapons and to confiscate them.

MR. O'BRIEN: Would you mark this as Defendant's Exhibit 1.

THE CLERK: Defendant's Exhibit A, marked for identification.

(Document marked Defendant's Exhibit A for identification.)

THE COURT: When was this search conducted?

THE WITNESS: It began on the morning of February 16th.

THE COURT: How long did it continue?

THE WITNESS: Five days.

BY MR. O'BRIEN:

Q Mr. Gard, I show you Defendant's Exhibit A for identification, and I ask you if you recognize that photograph?

A Yes, I do.

Q And can you state what it represents?

A It is a sampling of the type of weapons that were found during this search in the third week of February, 1973.

Q Would that picture represent all of the weapons?

A No.

Q That you found?

A No, it is only a sampling to indicate the types of weapons.

MR. O'BRIEN: I would like to offer this in evidence.

THE COURT: Any objections?

MR. RICHMOND: No objection.

THE CLERK: Defendant's Exhibit A for identification received in evidence.

(Defendant's Exhibit A for identification, received in evidence.)

THE CLERK: Defendant's Exhibit B, marked for identification.

(Photograph marked Defendant's Exhibit B for identification.)

BY MR. O'BRIEN:

Q Now, I show you Defendant's Exhibit B for identification, and ask you if you recognize the articles depicted in that photograph?

A Yes, I do.

Q Where have you seen those articles before?

A These items were found during the search of the facility during the third week of February, 1973. The long fabricated, home-made rope was found in the North Yard, the recreation yard. There is a hand-drawn diagram of the facility here. I don't recall where that was found. All of these items were found during that search.

Q Was that photograph taken during the course of your investigation of this incident, or disturbance at Clinton Correctional Facility in February of 1973?

A Yes.

Q And was that photograph brought to your office in connection with the investigation that you were

conducting?

A Yes.

MR. O'BRIEN: I would like to offer it in evidence.

(The Exhibit was shown to Counsel.)

MR. RICHMOND: I have no objection.

THE COURT: Received.

THE CLERK: Defendant's Exhibit B received in evidence.)

(Defendant's Exhibit B for identification, received in evidence.)

THE CLERK: Defendant's Exhibit C marked for identification.

(Photograph marked Defendant's Exhibit C for identification.)

BY MR. O'BRIEN:

Q Mr. Gard, I show you Defendant's Exhibit C for identification, and ask you if you have seen that photograph before coming to court here today?

A Yes, these items were confiscated during the search, and were a part of the overall investigation.

Q Was that photograph taken during the course as part of the investigation in February of 1973?

A Yes.

Q And was that photograph brought to your office in

connection with your conduct of this investigation?

A Yes.

MR. O'BRIEN: I would like to offer it in evidence.

(Exhibit C shown to Counsel.)

MR. RICHMOND: Is this the size of the ruler, or is this just to show the size of everything else?

THE WITNESS: That is a ruler.

MR. RICHMOND: All right.

There is one on each of them, and that is to show the size?

THE WITNESS: That was placed there only to illustrate the size of the weapons. It was not confiscated as part of the search.

THE COURT: Does the same thing apply to the yardstick and rulers in previous exhibits?

THE WITNESS: Yes.

MR. RICHMOND: I have no objection.

THE COURT: Received.

THE CLERK: Defendant's Exhibit C received in evidence.

(Defendant's Exhibit C for identification, received in evidence.)

THE CLERK: Defendant's Exhibit D, marked

for identification.

(Photograph marked Defendant's Exhibit D for identification.)

BY MR. O'BRIEN:

Q Mr. Gard, I show you defendant's Exhibit D for identification, and ask you if you recognize that photograph?

A Yes, sir. These items were all found during that search in February of 1973.

Q And was that photograph brought to your office as part of the investigation that was being conducted in February of 1973 at Clinton Correctional Facility?

A Yes, it was.

Q And was it -- were you advised that these articles were found out in among the population?

A Yes, there was.

Q At Clinton?

A Yes, sir.

Q Can you or would you describe what these articles generally are? I will withdraw that question.

Will you describe where these articles were found, if you know?

A I cannot say precisely, but they were found in the population area all over the place, and not all in one place.

MR. O'BRIEN: I offer it in evidence.

(Exhibit shown to Counsel.)

MR. RICHMOND: Would you verify this, and you say that these are weapons?

THE WITNESS: Excuse me?

MR. RICHMOND: Did you say that these are weapons?

MR. O'BRIEN: There has been no testimony to that.

MR. RICHMOND: We have no objection.

THE COURT: Received.

THE CLERK: Defendant's Exhibit D received in evidence.

(Defendant's Exhibit D for identification, received in evidence.)

BY MR. O'BRIEN:

Q Mr. Gard, I show you Defendant's Exhibit D in evidence, and ask you if you would identify for the Court what these articles generally are.

A They are articles that could be used for self-medication of contraband medicines.

Q And do you recognize any of the articles in this picture as having come from any particular part of the facility?

A Their origin was in the facility hospital.

Q What?

A Their origin was in the facility hospital, but they had been stolen from the hospital. Now, what part of the facility they were found in, during the search, that I cannot testify to. They were found in various places throughout the facility.

THE CLERK: Defendant's Exhibit E, marked for identification.

(Photograph marked Defendant's Exhibit E for identification.)

BY MR. O'BRIEN:

Q Mr. Card, I show you Defendant's Exhibit E for identification, and ask you if you recognize that photograph?

A Yes, these are more -- more instruments that were turned up in that same search.

Q And was that photograph brought to your office?

A Yes, it was.

Q During this investigation?

A Yes, sir.

MR. O'BRIEN: I offer it in evidence.

(Exhibit shown to Counsel.)

MR. RICHMOND: We have no objection.

THE COURT: Received.

THE CLERK: Defendant's Exhibit E,

received in evidence.

(Defendant's Exhibit E for identification, received in evidence.)

THE CLERK: Defendant's Exhibit F marked for identification.

(Photograph marked Defendant's Exhibit F for identification.)

BY MR. O'BRIEN:

Q Mr. Gard, I show you Defendant's Exhibit F for identification, and ask you if you recognize that photograph?

A Yes, I do.

Q Was that photograph brought to your office in connection with this investigation in February of 1973?

A It was.

Q And were you advised as to where these articles were found?

A I probably was. I know I was at that time, but I don't recall now where these places were, except that they did come out of areas where the population did have access to in the normal program.

Q So that these were found as a result of this search that was conducted subsequent to the closedown of the facility on February 15th?

A Yes.
Q 1973?
A Yes.

MR. O'BRIEN: I offer it in evidence.

(Exhibit shown to Counsel.)

MR. RICHMOND: We have no objection, your Honor.

THE COURT: Received.

THE CLERK: Defendant's Exhibit F received in evidence.

(Defendant's Exhibit F for identification, received in evidence.)

THE CLERK: Defendant's Exhibit G, marked for identification.

(Photograph marked Defendant's Exhibit G for identification.)

BY MR. O'BRIEN:

Q Mr. Gard, I show you Defendant's Exhibit G for identification, and ask you if you recognize the article in that photograph?
A Yes, I do.
Q And would you describe to the Court what it is?
A It is part of the wooden furniture that had been disassembled and could have possibly have been used as clubs; as weapons.

Q And were these portions of furniture found as a result of the search of the facility, subsequent to February 15th, 1973?

A Yes.

Q And was this picture furnished to your office in connection with the investigation that you were conducting?

A Yes.

MR. O'BRIEN: I offer it in evidence.

(Exhibit shown to Counsel.)

MR. RICHMOND: We have no objection, your Honor.

THE COURT: Received.

THE CLERK: Defendant's Exhibit G, received in evidence.

(Defendant's Exhibit G for identification, received in evidence.)

BY MR. O'BRIEN:

Q Mr. Gard, as a result of your investigation, was any action taken against certain inmates at Clinton Correctional Facility?

A Yes, for the -- well, the investigation revealed information on which we could -- on which we could base a specific charge against a specific inmate, where we could that was done, and action was taken,

yes.

Q And with respect to these articles that are represented in these photographs that have been introduced into evidence, were there any cases where some of these articles were connected up with certain inmates, and as a result of the possession of these articles by certain inmates charges -- disciplinary charges were brought against these inmates?

A I could not state about these articles in the photos whether there was or not. There were several inmates, many inmates who were placed on report with specific charges, some of them for possession of an instrument that could be used as a weapon.

Q Now, how long a period was the entire general population confined to their cells?

A The entire population, I believe, it was the third week in March before the entire population was back into program, and even at that time the entire population -- there was still some being held for the continuing investigation, and as a result of the actions taken and specific charges, but it was well into March before the program was fully under way, or what could be called fully under way.

Q Well, when you first closed down on February 15th, were any inmates at Clinton Correctional Facility

permitted out of their cells on February 15th?

A Yes.

Q Who were permitted out?

A Inmates whose services or employment was necessary to provide essential services but even they, only after they had been at least given a rough evaluation, or rough clearance, and things were moving quite swiftly that day, and we had to keep things going, and some inmates were released from their cells for the hospital -- for the kitchen, and the mess hall, and the maintenance operations, and some housekeeping services.

Q What about feeding with respect to -- in the period of time from February 15th to a period, say, of one day, the first day following February 15th, were the mess halls in operation?

A The evening meal -- the evening meal on February 15th we fed in the mess hall, but not on a regular schedule. We took fewer than the normal number would have been, into the mess hall at any given time. We had planned to continue feeing that way by bringing them in, in smaller groups, and then returning them to the cells until the search was completed and the investigation was completed.

However, on the following morning, the

morning of the 16th, we started feeding breakfast, and almost immediately we got -- I was in the mess hall, and we got a report that there was a disturbance beginning in B Block, and I put an order out right at that time to stop unlocking, and do not permit any more out of the cells, and return those to their cells who are already out, and we would feed in the cells until this thing was finished.

THE COURT: Where was that trouble, did you say, Mr. Gard?

THE WITNESS: Excuse me?

THE COURT: Where was the trouble reported?

THE WITNESS: In B Block.

THE CLERK: Defendant's Exhibit H marked for identification.

(Document marked Defendant's Exhibit H for identification.)

BY MR. O'BRIEN:

Q Mr. Gard, I show you Defendant's Exhibit H for identification, and I ask you if you recognize that document?

A Yes, I do. This was an announcement that was read by the Superintendent over the facility radio to all inmates.

Q And when -- do you know when that announcement was read?

A It says here on February 20th.

MR. O'BRIEN: I would like to offer that.

(Document shown to Counsel.)

MR. RICHMOND: We have no objection.

THE COURT: Received.

THE CLERK: Defendant's Exhibit H, received in evidence.

(Defendant's Exhibit H for identification, received in evidence.)

THE CLERK: Defendant's Exhibit I, marked for identification.

(Document marked Defendant's Exhibit I, for identification.)

BY MR. O'BRIEN:

Q Mr. Gard, I show you Defendant's Exhibit I for identification, and ask you if you recognize that document?

A Yes, I do.

Q And how many pages does that consist of?

A It is a two-page letter with two attachments.

Q It is an exhibit consisting of four pages, then?

A Right.

Q And will you tell the Court what that document

represents?

A This is a communication from the Superintendent to Mr. Oswald, and it is dated February 22nd, 1973, and it is bringing the Commissioner up to date on the progress of our investigation, and the search.

Q Now, the attachments that are attached to that communication to the Commissioner, what information is contained in those attachments?

A One of the attachments lists the number of inmates who are being held in keep-lock, pending action, on specific misbehavior reports, and there is another list of inmates being held in keep-lock, pending completion of an investigation and screening process.

MR. O'BRIEN: I would like to offer this exhibit in evidence.

(Exhibit shown to Counsel.)

MR. RICHMOND: I have no objection, your Honor.

THE COURT: Received.

THE CLERK: Defendant's Exhibit I, received in evidence.

(Defendant's Exhibit I for identification, marked as received in evidence.)

THE CLERK: Defendant's Exhibit J, marked for identification.

(Document marked Defendant's Exhibit J for identification.)

BY MR. O'BRIEN:

Q Mr. Gard, I show you Defendant's Exhibit J for identification, and I ask you if you recognize that paper?

A Yes.

Q Will you state what it is?

A This is a report giving the minutes of an executive meeting held on February 23rd, at the Clinton Correctional Facility.

Q And who was present at this meeting, and what was the purpose of this meeting? -- I withdraw that question.

Will you state who was present at this meeting?

A The Superintendent, Mr. La Vallee, Mr. Patrick Fish, who is attached to the Council's office of the Department of Correctional Services, and I was present, and Mr. Gordon Dale, who at that time was Deputy Superintendent for Administrative Services, and Mr. J. C. Bulbrand, who at that time was Deputy Superintendent of Program Services. Also Mr. William Donahue, who was and is the Coordinator of Volunteer Services at the Clinton Correctional Facility.

Q And what was the date that that meeting was held?

A February 23rd, 1973.

MR. O'BRIEN: I would like to offer this in evidence.

(Exhibit shown to Counsel.)

MR. RICHMOND: We object to this document based upon the fact that we requested all documents concerning this disturbance in Discovery, and we were not provided with this particular document. I think that as a result of that, that we are entitled to -- Mr. O'Brien precluded giving this to us.

THE COURT: Why wasn't that supplied?

MR. O'BRIEN: This is a document that was furnished to me by Mr.Gard when we came down here to Auburn to testify. I asked for all of the information that was available.

THE COURT: All right. Is that the only basis of your objection?

MR. RICHMOND: Yes, your Honor.

THE COURT: Of course, the witness could testify to everything that is in there. He was there, and he could use that to refresh his recollection. I don't know whether we are taking one step forward, and two backwards, or what.

MR. RICHMOND: We will stand on our objection, your Honor.

THE COURT: All right. Overruled.

THE CLERK: Defendant Exhibit J received in evidence.

(Defendant's Exhibit J for identification, received in evidence.)

THE COURT: Does that Exhibit J correctly and accurately reflect what transpired at that meeting?

THE WITNESS: Yes, sir.

THE COURT: And if you were to testify to what transpired, would you testify in substance to the substance of what is incorporated in this Exhibit J?

THE WITNESS: Yes, sir.

THE COURT: All right.

THE CLERK: Defendant's Exhibit K, marked for identification.

(Document marked Defendant's Exhibit K for identification.)

BY MR. O'BRIEN:

Q Mr. Card, I show you Defendant's Exhibit K for identification, and ask you if you recognize that document?

A Yes, I do.

Q And will you state what that is?

A This is a letter from the Superintendent, Mr. La Vallee, to Mr. Quick, who is Deputy Commissioner of the Department of Correctional Services, and this letter is dated March 2, 1973, and has one attachment which is updating the Commissioner on the status of investigation, and actions taken as a result of the investigation, as they affect the inmates listed on the attachment.

THE COURT: With reference to Exhibit J, I have had a chance to glance at it, and it is headed "Minutes of an Executive Meeting," and are these -- what is this, some Committee that is in existence at the Institution?

THE WITNESS: That is a Committee that meets three times every week.

THE COURT: And is it in the regular course of the institution's business to keep minutes of those meetings?

THE WITNESS: Yes, sir.

THE COURT: Were these minutes made in the regular course of the institution's business?

THE WITNESS: Yes, sir.

THE COURT: All right.

MR. ENGLANDER: May I ask a question?

THE COURT: Yes. And I am also, of course, going to permit you to, if you claim any surprise --

MR. ENGLANDER: We do.

THE COURT: -- I will permit you to such remedies as you need to correct any surprise.

MR. ENGLANDER: May I ask a few questions?

THE COURT: Yes, proceed.

BY MR. ENGLANDER:

Q Mr. Gard, these people who were in attendance at the meeting, which of them are generally on the grounds on the day-to-day, weekly basis of the facility at Clinton?

A All of them, except Mr. Fish.

Q And why was Mr. Fish there?

A He was sent to the facility by the Commissioner's office to assist the administration in the investigation of the situation that we had at that time.

Q And was that because it was a rather extraordinary situation, you believed, that the institution had at that time?

A Excuse me?

Q Is that because you maintain that there was an

extraordinary situation at Clinton at that time, requiring Mr. Fish's presence?

A Yes.

Q So then, it would not have been a meeting that you would normally hold? Mr. Fish would not normally attend, is that correct?

A Any meeting, regardless of the time or the circumstances, if there is -- if there is someone who can lend their expertise to the problem at hand, they are invited to attend the meeting.

Q When was the last time that Mr. Fish attended a meeting to provide his expertise, prior to February 23rd, 1973?

A I couldn't state that.

Q Excuse me?

A I could not say that.

Q Do you remember any other meetings that Mr. Fish attended other than this meeting in February?

A Yes, he has visited the facility since that time.

Q And do you recall if he ever visited before that time?

A No, I do not.

Q And do you know at whose request he visited the facility?

A No, I do not.

MR. ENGLANDER: I have no further questions, and we would stand on our objection, that this was not --

THE COURT: Your objection is noted.

MR. ENGLANDER: This was not a record kept in the ordinary course of business.

MR. O'BRIEN: I would like to offer this in evidence.

(Exhibit shown to Counsel.)

MR RICHMOND: We have no objection to this, your Honor.

THE COURT: Received.

THE CLERK: Defendant's Exhibit K, received in evidence.

(Defendant's Exhibit K for identification, marked in evidence.)

BY MR. O'BRIEN:

Q Mr. Gard, as a result of this investigation which was conducted, due to a situation that existed, that arose on February 15th of 1973, were certain inmates placed in special housing units, other than their regular cells?

A Yes.

Q Will you tell the court how many inmates were involved in the placing of such individuals in a

special housing unit?

A How many inmates were placed in special housing at that time?

Q How many inmates who had been in the general population and were placed in special housing units as a result of this disturbance,and the ensuing investigation?

Q 125 to 150.

Q Now, what particular housing unit were these men placed in?

A Housing Block E, which is normally a regular housing area and at that time was designated as a special housing unit for the purpose of housing inmates who were being separated from the population, either as a part of the investigation with no specific charges, or as a result of an action taken because of a specific charge. This Special Housing Unit 14 was also put into use, the same way.

Q Now, what was the basis of the action that you took with respect to those individuals against whom you had no specific charge, or no specific proof? What was the basis of the action that you took against any such individuals who were placed in the special housing units?

A I don't understand your question. Are you asking me

what authority did we use?

Q What was the basis of your action? What information did you have?

A Information that we received from various sources, inmates, and employees, indicating that these people may be involved in an attempt to disrupt the facility, that some of them -- some of them allegedly were involved in strong-arm tactics, attempting to force inmates into various organizations within the inmate structure.

Q During the early part of 1973, did an Inmate Liaison Committee exist at Clinton Correctional Facility?

A Yes. That was part of the information that we were receiving. It was indicated from many sources, areas, that a large part of the problem within the facility was an attempt by some segments of the inmate population to take over control of the Liaison Committee, because they weren't satisfied with the results that the Liaison Committee was producing.

Q And some of these individuals were placed in special housing units without any specific evidence against them, is that correct?

A That is right, pending the investigation -- under investigation, that is right.

Q Now, during this period of time, the emergency

situation was still in effect?

A It was an on-going -- it was an on-going condition, yes, sir.

Q Now, can you tell the Court how long a period of time this investigation took?

A Our final report to the Commissioner's office would have been during the first week in April.

Q That would have been April of 1973?

A That's right.

Q And was there any formal declaration that the emergency had terminated at that time?

A A summary letter was sent to the Commissioner's office, listing those people that were inmates that were -- had been indicted by the Clinton County Grand Jury, or who were listed -- well, this was a final report, and everything was back to normal, except these things are still pending, and some inmates are still hospitalized, and there is some criminal action pending. All programs were back into operation.

Q Now, do you know the plaintiffs in this action, Francis Bloeth, John Suggs, and Raymond Guilliard?

A Only by record. I do not know -- I don't know any one of them personally.

Q I show you Defendant's Exhibit K in evidence, and ask

you if on the attachment to that exhibit, these individual names appear (offering)?

A Yes, they do.

Q And as of the date of that letter that was sent to the Commissioner, what was the status of these particular plaintiffs?

A This letter was dated March 2nd, 1973, and let me see: Raymond Guilliard is listed as continuing in the same status pending our "R.X." Program. Francis Bloeth continuing in the same status pending our "R.X." Program. John Suggs continuing in the same status pending our "R.X." Program.

Q Now, can you explain what continuing in the same status means in that?

A Housed in a Special Housing Unit.

Q And will you also explain to the Court what the pending "R.X." Program means?

A During the course of this investigation, and as a result of each individual investigation, a great many inmates were recommended for transfer from Clinton to some other facility. And these people, at that time --

Q (Interrupting) Was this as a result of this emergency situation that arose?

A Yes, yes, yes.

Q And were a number of inmates transferred out of the Clinton Correctional Facility to other facilities?

A Yes, sir.

Q Does it appear on that sheet that that was the case?

A It does in some cases. We have one here that had been transferred to Green Haven since the previous report. Another one had been transferred to ACTEC, and another one had been transferred to Auburn. Another one had been transferred to Attica, and one to Great Meadow. And so the status listed here is simply to continue in the same status for seven days --

THE COURT: (Interrupting) Mr. Gard, do I understand from your testimony that the "R.X." Program then, was a program pending a transfer?

THE WITNESS: Yes.

THE COURT: That indicated that the inmate was to be transferred?

THE WITNESS: Yes, sir. They were being held, at that time, pending their transfer to the other facility, the R.X. Program, or whatever facility is indicated.

The machinery for the transfer was already in motion, and they were being held, at that time, pending the transfer or the completion of the

investigation.

THE COURT: So these R.X. Program people, the investigation was concluded?

THE WITNESS: No, sir.

BY MR. O'BRIEN:

Q Were these individuals still under investigation?

A Yes, sir.

Q To determine whether or not they had participated in any way in the disturbance or were involved in any way?

A Yes, sir.

Q In that disturbance?

A Yes, sir. If the transfer to the other facility had not been completed, then some decision would have had to have been made internally, on the basis of the on-going investigation, to determine what we would have done with them at that time, if the transfer had not been effected or approved. So until such time as the transfer was effected, that the investigation was still active.

Q Now, do you have any personal knowledge with respect to the reasons why these particular plaintiffs were placed in special housing Unit E, and from there were placed up in Unit 14?

A In the early stages of the closedown, when we first

went into the emergency operation, that is, when we abandoned the normal program and we went into emergency procedures, I set up a group of senior employees in an office in the Administration Building to screen information coming in. We requested all employees to supply us with information -- any information that they could gather, or had of their own personal knowledge that would in any way contribute to the investigation.

This group was screening the information and received reports from fourteen different areas within the facility. Each one of these areas listed independently inmates that they believed might be involved in disruptive activity, or subversive activity. Of the three plaintiffs named, each appeared on several of the fourteen separate lists. They surfaced on everybody's -- not everybody, but a great many of the fourteen separately compiled lists, their names surfaced as possibly being involved in this activity.

Q Was any other information that was in your possession used to assess the situation?

A As these names surfaced, and as a result of these reports, then we began a more intensive screening process on these people, and a great many names,

these three men here this morning were three of a great many, but as these names surfaced, as a result of these reports coming in, then a more intensive review of their previous history, as well as their present activity, was begun.

Q As a result of these screenings that you did, and as a result of the investigation, did you uncover any specific proof against these three individuals, these three plaintiffs?

A Excuse

Q As a result of this information that you conducted and as a result of the screening that was done, did you uncover any proof, or any evidence that these individuals were in any way involved directly or indirectly in this disturbance?

A No, there was -- there never was at any time any specific charge made against any one of the three of them.

Q Were there any other inmates --

THE COURT: (Interrupting) Mr. Gard, that wasn't the question. The question was with reference to proof. I assume when you say that there wasn't any charge made, you are saying in substance that there wasn't sufficient proof of any kind?

THE WITNESS: If we had developed proof,

we would have made a charge, yes, sir.

THE COURT: All right.

BY MR. O'BRIEN:

Q Were there any other inmates at Clinton Correctional Facility that were in what you might say the same category as these three plaintiffs?

A Yes, yes.

Q And could you give the Court an idea as to how many other inmates were investigated, screened, and yet no proof with respect to their participation in this disturbance was ever uncovered?

A Well, at the outset, the whole population was being investigated individually, and I would say that they were all investigated. But in one of the exhibits there, we have a list of names that were being held as of that date, with no specific charge leveled against them.

Q Is that the Exhibit that you have?

A No, that is the four-page exhibit.

Q Is that or would that be part of Defendant's Exhibit I?

A Yes.

Q And approximately how many such individuals were there on that list?

A As a guess here, I would say 35 to 40 on that list,

as of that date.

Q How long had you been at Clinton Correctional Facility prior to February 15th, 1973?

A I reported there in November, November 6, 1972.

Q Now, prior to February of 1973, had there been any other declarations of emergency at Clinton?

A No.

Q While you were there?

A No.

Q Have there been any other disturbances or declarations of emergencies as declared at Clinton Correctional Facility since February of 1973?

A No.

MR. O'BRIEN: Would you mark this, please.

THE CLERK: Defendant's Exhibit L for identification.

(Document marked Defendant's Exhibit L for identification.)

BY MR. O'BRIEN:

Q Mr. Gard, I show you Defendant's Exhibit L for identification, and ask you if you recognize that (Offering)?

A Yes, sir.

Q And will you state what it is?

A This is a letter written on April 4th, 1973, to Deputy Commissioner Quick, that is signed by Mr. Pat Fish, and by me, and it is a summary of information including the investigation, with the list that is still hospitalized as a result of the injuries, and the list is -- the list is the results of the investigation made by the New York State Police, and it indicates that at least one has been indicted, and it is a summation report and including conducting the state of emergency.

Q And do you recall writing that letter with Mr. Fish?

A I signed it, so I must have written it.

Q What was the situation or condition at the facility as of the date of the writing of this letter?

A We had achieved stability, and had enjoyed stability for two or three weeks before we concluded.

MR. O'BRIEN: That is all of the questions that I have.

MR. RICHMOND: May we see it?

MR. O'BRIEN: I am not offering it.

MR. RICHMOND: May we have a brief recess?

THE COURT: We will take our mid-morning break, and the Court stands for a short recess.

THE CLERK: The court stands for a

short recess.

(After a short recess, the proceedings were resumed.)

THE COURT: Do I understand that you gentlemen feel that you can conclude this morning if Irun beyond the usual recess time?

MR. RICHMOND: With cross-examination of Mr. Gard?

THE COURT: Yes, cross-examination and redirect.

MR. ENGLANDER: What is the usual time?

THE COURT: 12:30.

MR. ENGLANDER: We can't do that.

THE COURT: If you can't do it, we will run at the usual time. I do not want to starve anybody out, including myself.

CROSS-EXAMINATION

BY MR. RICHMOND:

Q Mr. Gard, at the outset I would like to ask you a few questions about the research that went on, starting on February 15th. Now, would you describe the general procedure for that search?

A Excuse me?

Q Could you describe the general procedure for the search that went on on February 15th.

A All of the closed areas of the prison were searched by Corrections Officers and other employees, including shop foremen, for example. There were no inmates present in those areas. They were all in their cells.

This was -- this phase of the search was begun in the afternoon of the 15th. The inmates, themselves, were searched individually and they were removed from their cells and their person was searched for possession of contraband, and then the cell was searched. I believe in all instances, certainly a majority of instances, this was done with the inmate present.

Q Was this a search of the whole institution, in other words?

A Yes.

Q And how many inmates were in the institution at that time, and what was the population of the institution?

A This is just a recollection, but I believe it was about 1600.

Q Now, was this, in your experience as a Corrections Officer of 20 years, was this the most thorough search that you could have done of the institution at that time?

A No, I have been involved in earlier years in as thorough searches.

Q In more thorough?

A As thorough.

Q Could this search have been more thorough?

A I don't suppose the Deputy Superintendent for Security is ever satisfied with thoroughness. I would have had to say it could have been more thorough, but I would say that about anyone.

Q At the time that you were in charge, and you made sure that it was as thorough as possible, is that correct?

A As thorough as possible.

Q Now, how long did that search continue? How long did it take you to go through the whole search?

A Ten to fourteen days before the final areas were cleared.

Q Ten to fourteen days. But you stated on direct that it was a five-day search?

A Excuse me?

Q On direct you stated that it was a five-day search, is that correct?

A Of the inmates. The inmates were confined that long before we started letting them out in numbers into controlled areas that had been searched. But there were other areas that had not been -- had not been

searched yet, and were not open for inmate traffic.

Q And what areas would those have been?

A Oh, segments of the shop buildings, and parts of the yard, particularly.

Q Now, if I am to understand you correctly, you stated on direct that inmates were being allowed back out into the population to their jobs, and into the Rec-area yards, within five or six days after the search, is that correct?

A To my recollection, yes.

Q And yet even though they had access to the yard, and to the job facilities, the search was still continuing at that time?

A Those places that they had access to had been searched. That part of the search was complete.

THE COURT: That is, after the five or six days there was access to limited parts of the facility?

THE WITNESS: Yes, sir.

BY MR. RICHMOND:

Q Now, these defendant exhibits, A through G, I believe, looking at those, Mr. Gard, am I to understand that those are the sum total of all of the items found during the search?

A They are not the total, no. They are examples.

Q Examples?

A Yes, of items that were found.

Q How many items were found?

A There wouldn't be a total count anyplace. Hundreds.

Q Hundreds? Now, all of the items that were seized from the inmates were contraband, is that correct?

A That is right.

Q Considered contraband?

A Yes.

Q Now, what is the definition of contraband?

A Any item that is not permitted as personal property, and an approved item, or any item that is not issued by the facility for an inmate's use.

Q Now, is it possible that -- if I may see this -- is it possible that some of these items might be sold in the institutional commissary?

A It is possible.

Q For instance, these two or three items here appear to be butter knives, is that correct?

A That is right.

Q And as I understood, they are sold in the institution commissary?

A But not with sharpened edges, or sharpened points.

Q And do these have sharpened points?

A These here have.

Q These butter knives?

A They have a sharpened edge.

Q And that one?

A Sharpened point and edge.

Q It doesn't appear to have it.

A That is a point (indicating).

Q O.K. But do you agree that some of these knives could have been used for quite proper purposes?

A Oh, yes.

Q But yet they still would have been considered contraband?

A Yes.

Q So then, would I be correct in saying that contraband includes some things which are obviously dangerous, and some things which might be used for a dangerous purpose, and have other uses which are quite proper?

A That is conceivable.

Q In other words, contraband includes a large range of materials. Now, during this five-day search, did you discover any of these items of contraband in the cells or on the persons of plaintiffs Mr. Bloeth, Mr. Guilliard, and Mr. Suggs?

A No.

Q Were they connected in any way with any of the items of contraband?

A No.

Q And if they had been connected in any way with the items of contraband they would have been given a hearing, would they not?

A That is right. There would have been a misbehavior report filed, and they would have been processed through the regular procedures.

Q Taking, for instance, say, one of the butter knives, for instance, had been found in Mr. Bloeth's cell, and say, was sharpened, and found during that search. Could you describe to the Court what the procedure would have been in that instance?

A A behavior report would have been filed by the employee who found the instrument in the cell. He would have identified the location, that is, he would have identified what cell the instrument was found in. He would have identified the person assigned to that cell, and he would have stated in the report where the instrument was found in the cell, and he would have submitted the report and the instrument to my office.

Q And what would have happened -- what would have happened to the report at that time?

A The inmate would have been brought to the Adjustment Panel.

Q Is that a disciplinary hearing at that time?

A In a sense, yes.

Q Now, if that inmate was -- well, what standard of proof would have been required at the Adjustment Committee for a finding of guilty on possession of contraband?

A That the report submitted by the officer and the interview with the inmate. It is usually settled right there.

Q And say that was a hearing, and the officer wrote a report and said, "I found this sharpened butter knife in the cell of Francis Bloeth," and he was brought before the disciplinary or the Adjustment Committee, and he said, "That is not my knife, and it was not in my cell." Is it possible, on the basis of those facts, that Mr. Bloeth could have been found guilty?

A It is possible, but there would be further investigation before that was done.

Q And in what form would that be?

A The Adjustment Panel would have interviewed the employee who made the report and that would be to satisfy themselves that there was no mistake in the report, and for instance, a possibility of a case of mistaken identity. But the inmate's denial

would not necessarily clear him of the charge.

Q It would be possible, then, just on the basis of the Corrections Officer's word in the face of the inmate's denial, for the inmate to have been punished for possession of contraband, is that correct?

A It would be possible after a complete investigation and the members of the Adjustment Panel, if they were satisfied that this was a valid report, it would be possible for them to take action on the basis of the information that they developed in the investigation.

Q But that investigation might only be interviewing the charging Corrections Officer, is that correct?

A It could be.

THE COURT: Then the Adjustment Committee would make a finding of fact on which one they believed, and they would have to decide, like a Court, who to believe?

THE WITNESS: Yes.

THE COURT: All right.

BY MR. RICHMOND:

Q Now, the inmate being charged with the possession of contraband and found guilty in the Adjustment Committee, what would the punishment be that he could receive for possession?

A He could be confined to his cell for a period of

no longer than seven days, with a recall. He could be denied certain privileges. He could be recommended for a change of program. He could be -- if the charge was sufficiently severe, he could be referred to Superintendent's proceedings for further action.

Q Could he be -- if you had a specific procedure, could he be sent to Unit 14, or another special housing unit?

A Yes.

Q For how long?

A For a period of no longer than 60 days.

Q Mr. Gard, you testified here that the search was very thorough, and that you found a number of pieces of contraband that you were not even able to estimate the number of them. Was your opinion at that time that there were no -- to the best of your knowledge, that there was no pieces of contraband left in the institution?

A No.

Q But you were pretty well sure?

A That there was no contraband left? No, sir. I was certain that there was contraband left.

THE COURT: Your experience dictates that the combined skill of the inmates is greater

than your skill at detecting, is that right?

BY MR. RICHMOND:

Q But there was a substantially less amount of contraband?

A Substantially less, yes.

Q Now, certainly, the amount of contraband and the amount of weapons in the institution would go to how dangerous a condition the institution is in, wouldn't it?

A Yes.

Q So that when you completed this search, and recovered all of these large numbers of contraband, it would be safe to say that the institution was in a much safer position than it had been prior to that search?

A Yes.

Q And probably it would have been in a much safer condition before February 15th, is that correct?

A Yes.

Q And when was the last time, prior to February 15th, that one of these total searches had been made of the institution?

A That was the first time, in my time at Clinton, which was only --

Q (Interrupting) How long was that? I know that you

testified under direct, but how long have you been at Clinton?

A November 6, 1972.

BY MR. RICHMOND:

Q Turning now to the investigation, Mr. Gard, that you conducted after the search, am I to understand that this investigation started after the search, or did it start on February 15th?

A It started, in essence it had been going on in a very low key for two or three weeks prior to the 15th. But on the 15th, it became highly accelerated.

Q I see. Now, could you state what the general procedure was, to your knowledge and your expertise, of a man with a great deal of correctional experience. what was the general procedure for making an investigation of this sort?

A Of this nature?

Q Yes.

A When you have the whole population involved, it is an information gathering process.

Q Excuse me?

A You would have -- you would have an information-gathering process, and then --

Q (Interrupting) Could you describe that process, please?

A All employees are directed to feed into the administration any information that they may have that in any way could contribute to a successful conclusion of the investigation.

Q Now, how was this information conveyed to the institutional officials, yourself, and Mr. La Vallee? Was it conveyed orally, or in written form?

A Usually orally. An employee and his immediate supervisor, and then it filters in.

Q And do you reduce these reports, when you receive them, to writing and make notes on what these reports are?

A Yes.

Q Memoranda?

A Yes, any information that seems pertinent at that time, yes.

Q Now, so then in the course of this investigation, February 15th, you were continually receiving reports, oral reports from employees, and were you receiving them from inmates, as well?

A I wasn't receiving it directly from inmates. I was receiving it secondhand from inmates.

Q I see. They would give them to the officers, and the officers would give them to you, and you would write them down?

A Not necessarily. We were using tape recorders, and taking notes, and we were in --

Q (Interrupting) Do you have --

A (Interrupting) We were receiving a large body of information, and much of which was immediately eliminated. Some of which was held for investigation. Some of which was sent back out, and on the "get me more information about this," basis.

Q But these reports would be placed either on tapes, or in some sort of memorandum that you developed, is that correct?

A Yes.

Q Would it be possible for you to produce these memoranda for us?

A There isn't much of it available now.

Q Why would that be?

A Because at the conclusion of the situation, that caused that -- that caused the closedown and the search, and the investigation and reassignment, and transfer, and program changes, there was such a large volume of paper, that the matter was over, and much of it was disposed of.

Q You just threw it out? You just threw it out, in other words?

A Yes. Much of it was. There was some that was retained.

Q What of it was retained?

A Excuse me?

Q What of it was retained?

A Well, the photographs, these items that you have in evidence, that was retained. Some materials have been given to you, and that was retained, but not a great deal. Just summary information was all that was retained.

Q And you stated that during this investigation, fourteen different areas of the institution submitted lists as to people that were somehow involved in this emergency that you testified to? How about the lists, do you have the lists?

A I have a list of those names that have appeared most frequently, yes.

Q And where would that be?

A I believe Lieutenant Hoy has it.

MR. O'BRIEN: Is this what you mean (offering)?

THE WITNESS: Yes, sir.

MR. RICHMOND: May I state at this time that this is another piece of information that we have not gotten, and we would ask for every piece of information, report document, and memorandum that had anything to do with this incident of

February 15th, that had been prepared by the Correction Facility at Clinton, relating to our clients, or any other individuals that are involved, and I must say that we have not received this document.

THE WITNESS: May I say something, your Honor?

THE COURT: If Counsel wants you to, you may.

THE WITNESS: This report that I have in my hand here involves a great many inmates, and I think any inmate is entitled to privacy.

I don't really feel that I should unilaterally decide to give this information up on so many inmates to anyone.

MR. RICHMOND: Your Honor, I think that Mr. O'Brien is well aware that there are procedures for that in Discovery, and he could have used them.

THE COURT: I am not going to get bogged down in procedure. We are trying a case of these three plaintiffs.

Now, what happened to somebody else is of no concern. I don't know what difference it makes -- what a great deal of your questioning is about,

unless you are using this as discovery for some other action?

MR. RICHMOND: No, your Honor.

THE COURT: But as far as it relates to these three plaintiffs, it appears that there was no evidence against them, and no charges of any kind brought, and no due process is claimed or afforded -- even claimed to have been afforded them.

So that all of this business of what due process they go through with other people, I don't know what the purpose is. There has been no objection, and I will let you go on, but I am going to stop this other now.

MR. RICHMOND: May I have a second?

THE COURT: And I think, just as a plain matter of good sense, we all know that in a prison environment, it would be a dangerous thing to disseminate information such as the witness is telling us he has at this time.

MR. RICHMOND: That may well be true, but there is a procedure for Counsel to --

THE COURT: (Interrupting) There is, and I have ruled.

MR. RICHMOND: Mr. O'Brien at no time objected.

THE COURT: He should have objected.

MR. O'BRIEN: At the time, I was not aware of this.

THE COURT: Well, you should become aware of what your case is about.

MR. RICHMOND: It is clear that they cannot --

THE COURT: (Interrupting) I agree with you procedurally, and I rule against you substantively. All right.

BY MR. RICHMOND:

Q May I ask you this: Did Mr. Guilliard, and Mr. Bloeth, and Mr. Suggs, did their names appear on that document that you have in your hand?

A Yes.

Q Could you read to the Court those portions of it?

A I believe that -- in fact, I am virtually certain that the information in here is, as it relates to the three plaintiffs, is all included in those -- in the recommendations to the prescription program, which I believe you have been provided with.

Q So your testimony is that there is no more specific evidence in that, specific evidence against the men than is received or has been put in the documents before the Court, is that correct?

A I wouldn't make that kind of a positive statement because I would have to review -- I would have to review those recommendations for the prescription program as compared against this, but I would make that statement.

MR. RICHMOND: May we have an opportunity to look at that document?

THE COURT: The witness can examine it. I think that it is becoming apparent that we are going to go far into this afternoon.

MR. RICHMOND: I think so.

THE COURT: Then we will just proceed to our usual recess time.

MR. ENGLANDER: At this time, it might be appropriate to cut off, otherwise we will be breaking up this new line of questioning.

THE COURT: We will recess now until 1:15.

THE CLERK: Court stands in recess until 1:15 p.m.

(Whereupon a recess was taken until 1:15 p.m.)

THE COURT: Proceed.

BY MR. RICHMOND:

Q Mr. Gard, you stated on direct that during the search, during those three to five days of the search, right after February 15th, that some people were allowed out, with specific jobs, is that correct?

A Yes.

Q Would some of the men be the block porters?

A Yes.

Q Now, were any preparations taken to see that the men who had those jobs at that time had not been involved in the incident?

A The early immediate evaluation was made by the employees in those areas, that they went over the list of the men on their count, and they selected as many as they would require to have for a very minimum operation, and of those, they selected the ones that they had the most confidence in.

Q I see. And so that in an emergency situation like that you would not want men who, of course, were suspected of being involved in the incidents, being the only ones let out, is that correct?

A True.

Q Now, Mr. Gard, going back to the investigation, in the original decision to place Mr. Bloeth, Mr. Suggs,

and Mr. Guilliard in E Block, what information did you receive which caused you to do that, that you based your decision on?

A These three in particular?

Q Yes.

A Information that was received into my office coming from various sources, and this doesn't relate only to those three, but it relates to everyone that was put into E Block.

Q I see.

A We received information that indicated the possibility that these people that we placed in E Block were involved to some degree in the planned disruption.

Q And you say the possibility that they were involved to some degree. Now, could you be a little more specific as to what the nature of that information is? I think that you have to admit that it is a little bit vague.

A I am not sure that I understand your question?

Q Well, I mean, was it a -- an inmate came forward and says that Mr. Bloeth, Mr. Suggs, and Mr. Guilliard were involved in the stabbing?

A Yes.

Q And do you have the name of that inmate?

A No.

Q So that there was an inmate who came forward?

A Several.

Q Several came forward and said that Mr. Bloeth, and Mr. Suggs, and Mr. Guilliard had been involved in the stabbings?

A In the stabbings?

Q Yes?

A No, I didn't say that.

Q Oh, what did you say?

A In the atmosphere.

Q They had been involved in the atmosphere. Could you be a little more specific about that?

A The information that was being received was that there were many inmates in the facility at that time who were attempting to stir up a sufficient number of inmates to disrupt the operation of the facility. Among the many names that were received as being involved in this agitation was the three plaintiffs.

Q Now, how many? How many names were given you that were involved in the agitation to disrupt the facility?

A 125 to 150.

Q Now, what was the specific -- what was the specific information, again, that they were involved in some activities to disrupt -- to disrupt the facility? Were they -- what type of information was it that led you to that conclusion? Did an inmate come in and say

that these inmates are trying to disrupt the facility?

A I am talking about the whole group, now, and not specific people. I am talking about the total investigation.

Q I am just talking about Mr. Bloeth, Mr. Suggs, and Mr. Guilliard. Did an inmate come into your office and say specifically that Mr. Bloeth and Mr. Suggs and Mr. Guilliard are disrupting the institution?

A I did not testify that the information came directly from inmates. It came to me through other employees that inmates were reporting this to them.

Q What was the nature of their involvement? Was it just a general statement that they were involved in disrupting the institution? Was it a little more specific?

A That their concern, primarily, -- their efforts to -- to take over control of the Liaison Committee. That was the information that was being received.

Q Is the Liaison Committee a legal function at Clinton?

A Yes, it is legal.

Q And are the members elected?

A Yes.

Q And would trying to get yourself elected to the Liaison Committee become cause for being placed in E Block?

A It would depend on the tactics used to promote your

election.

Q What kind of information did you receive?

A That there was fear tactics being used.

Q By specifically Mr. Bloeth, Mr. Suggs, and Mr. Guilliard?

A Yes, among others, yes.

Q And who are some of the others?

A That whole list of names that we provided to you.

Q That whole list of names. Now, do you remember who was President of the Inmate Liaison Committee on February 15th?

A No, I do not.

Q Is there any way that we could ascertain that information? Do you have a document of that?

A No, I don't, no.

Q Was it Thomas Mungo, and does that name ring a bell?

A I don't know.

Q Do you remember who was Vice President?

A No, sir.

Q Was that Carmine Moccia?

A I don't recall.

Q Might it have been?

A (No answer)

Q If I told you that those two men were president and vice president of the Inmate Liaison Committee at that time, and that they were put in E Block among

these other groups of men, would you say that that was inaccurate? Is it possible, Mr. Gard, that the President of the Liaison Committee was part of the group to overthrow the Liaison Committee?

A That is conceivable, yes.

Q And would you elaborate on that a little bit?

A The Liaison Committee, I believe, consists of 20 members. If the President was unable to control the total membership the way he chose to, he might choose to overthrow the whole Committee. That is pure speculation on my part right now.

Q Now, on direct testimony you specified that these men were being held on investigation with no specific charges, is that correct?

A That's right.

Q Now, it strikes me that someone who is being held for using strong-arm tactics to take over the Inmate Liaison Committee, that that would be a very specific charge --

MR. O'BRIEN: Would you repeat the question? Have you finished it yet?

BY MR. RICHMOND:

Q You stated on direct that these men were among those men being held for investigation with no specific charges, is that correct?

THE COURT: No specific proof, and no specific ahrges, both.

BY MR. RICHMOND:

Q And no specific proof, is that correct?

A Yes.

Q Now, you have just stated that these men, Mr. Guilliard, Mr. Bloeth, and Mr. Suggs, were among those who were -- there was information, specific information that they were involved in strong-arm tactics to take over the Liaison Committee, is that correct?

MR. O'BRIEN: I object to the question. There is no such testimony here that he had specific information that they were --

THE COURT: (Interrupting) The witness just testified that he had information, elicited by the plaintiffs' counsel, that they were using -- that he rightly or wrongly, accurately or inaccurately, he had information that these three plaintiffs were using fear tactics to obtain control of the Liaison Committee.

MR. O'BRIEN: But no proof.

MR. RICHMOND: I would prefer if Mr. O'Brien did not testify.

THE COURT: Let the witness answer.

Read back the question.

(The previous question was read by the reporter.)

THE WITNESS: Yes.

BY MR. RICHMOND:

Q Now, in view of that, why would they be held during the investigation with no specific charges? That would seem to me to be a very specific charge.

A The investigation was to attempt to determine whether or not this information was valid.

Q Well, you don't know --

A (Interrupting) And no specific charges would be made until I could prove that that charge was valid or the information was valid.

Q So in the running of the Clinton Institution, you need proof of a charge to make a charge?

A I insist on having a very good charge, yes, before I make one.

Q But this information that you had with regard to these men, and with regard to this specific incident, taking over the Liaison Committee, that wasn't even specific enough to make a charge?

A The information that had been brought to me as having been related to my employees by inmates.

Q So it came to you --

A (Interrupting) And unless I can satisfy myself by

investigation that the charge by an inmate against another inmate, was a legitimate one, then I will not make a formal charge against the inmate that is being reported.

THE COURT: Well, to sum up: If I understand you correctly, unsubstantiated allegations are sufficient to cause you to make an investigation?

THE WITNESS: Yes, sir.

THE COURT: But not to prefer charges?

THE WITNESS: Yes, sir.

THE COURT: All right, that is pretty clear.

BY MR. RICHMOND:

Q O.K. But you thought it was enough to lock them up? But you thought it was enough to lock them up in E Block?

A Yes.

Q Now, what relationship does this -- did this attempt to take over the Liaison Committee, with the stabbing?

A The information never developed that there was any connection at all.

Q Were the fellows who were stabbed any individuals involved in those incidents with these three on the Liaison Committee?

A Not to my knowledge.

Q None of them? O.K. Now, at this point, after you placed the individuals in E Block, on the basis of these second-hand allegations that you received, regarding the strong-arm tactics of the takeover of the Liaison Committee, what steps did you take to find out whether these allegations were, in fact, accurate?

A We were dealing with something like 140 individuals in this investigation --

Q (Interrupting) Now, am I correct in understanding that all of these 140 inmates were involved in the attempt to take over the Liaison Committee?

A No, there were other bits of information that was received totally unrelated to the Liaison Committee. Some of the people under investigation, they may have been related to other information.

Q And what specific steps did you take in your investigation as to whether these men were involved in these --

A (Interrupting) We sifted out the information, to begin with, for seriousness. We considered the volume of the information, which I believe is important. If it comes from only one source, it may or may not be important, but if it comes from several sources, it probably is important.

Q Were the allegations against these men considered important or unimportant?

A The same from several sources.

Q Now, going back to the actual allegations, what exactly were the strong-arm tactics that these inmates said that these fellows were using?

A I don't know that they ever were defined, but inmates -- some inmates were expressing great concern for their safety. Some of them had even gone so far as to write to their families asking their families to get them some help to get them out of Clinton, because this place is about to blow up.

Q Well, that is not what I asked.

A The atmosphere of tension within the place was, in part, generated by the rumors, the allegations that some number of inmates within the population were attempting to take over the Liaison Committee by fear.

Q Now, what do you mean by that?

A It could mean thatthey were attempting to make present members of the Committee, whom they believed to be overly cooperative with the administration, they could be attempting to make them get off of the Committee, to resign, so that the vacancies would occur, causing a new election to be held.

That could be one method, and that was mentioned.

Q Were there threats of violence?

A Yes, that is what the inmates were saying.

Q Specifically relating to Mr. Bloeth, Mr. Suggs, and Mr. Guilliard?

A To the overall investigation, and their names were --

Q (Interrupting) Specifically related to Mr. Bloeth?

A That name was mentioned.

Q There were some individuals who specifically related threats of violence to Mr. Bloeth, Mr. Suggs, and Mr. Guilliard?

A No.

Q And so Mr. Bloeth and Mr. Suggs and Mr. Guilliard were the receivers of allegations by inmates of using non-violent means of taking over the Liaison Committee?

A I can't say that, sir.

Q Well, you testified that they -- that they were not going to use violence to take over? Is that correct?

A The information that was received was that a number of inmates were involved in an effort to take over the control of the Liaison Committee, with the ultimate objective of disrupting the program, that they were using fear tactics, and there were a great number of names that were being involved, and among that great number of names were the three plaintiffs.

It was not specifically that Mr. Jones, or Mr. Smith, or Mr. Brown did this or this or this, and that was never received, and that is why specific charges were never brought.

Q But it was enough to lock them up? It was enough to lock them up for a month, is that right?

A In the atmosphere present in that facility at that time, with so many people who were expressing fear, it was necessary to separate every one from the general population until they could be cleared of the suspicion of being involved in this coercion.

Q So your testimony -- would this be your testimony, or would you say that had there not been an emergency situation present at Clinton at that time, and that there had been these types of reports about the Liaison Committee, that there would have been no need to lock them up?

A Would you repeat that, please?

Q Had there not been an emergency situation at Clinton --

THE COURT: (Interrupting) Did you act by reason of the emergency situation?

THE WITNESS: Yes.

THE COURT: Or is this ordinary procedure?

THE WITNESS: Yes.

THE COURT: This was conduct in response to an emergency?

THE WITNESS: Yes, sir.

THE COURT: Is that what you are telling us?

THE WITNESS: Yes, sir.

BY MR. RICHMOND:

Q One more question. If there was no emergency, and the same inmates had come without allegations about Mr. Bloeth, and Mr. Suggs, and Mr. Guilliard, of the time that they came, back in February of 1973, and there was no emergency situation present, these men would not have been locked up, is that correct?

A These people were in my population today, if we have a stable atmosphere today, and I received information that these people were doing some kind of agitating for disruption, I would have them very carefully observed. I would have them searched, and I would have their cell searched. I would look for positive evidence. If I could not find positive evidence, there would be no action taken.

Q So you would not have locked them up on the basis of this?

A Not today, no.

(Continuing)

If I had no emergency situation today.

Q O.K. O.K. Now, going back to this investigation that went on after these allegations were made against these men, how many officers were involved in the investigation?

A Every employee in the facility.

Q Every employee in the facility? And what were they doing? What were their roles in the investigation?

A To provide information of any nature from any source that they could come up with.

Q About how much of their working day would they spend on this investigation?

A Eight hours.

Q Eight hours a day. Why did the investigation take 40 days with every man in the institution trying to find this out?

A It didn't take 40 days for all of them. Some of them were out the first day.

Q Why did it take 40 days for Bloeth, Guilliard, and Suggs?

A Well, when you get through 1600 men, it takes time.

Q So is it your testimony, that Mr. Bloeth, Mr. Suggs, and Mr. Guilliard were the last ones investigated?

A No, I didn't say that.

Q So why did it take 40 days for Mr. Bloeth, and Mr. Suggs

and Mr. Guilliard to be investigated with everybody in the institution working 8 hours a day?

A I am not sure that it took that long.

Q Well, they were locked up for 40 days.

A I am not sure the number of days, is what I am saying. The investigation, per se, of these individuals, I would say, was never completed. They had left Clinton before the report of the overall investigation was ever completed.

Q O.K. We have an incomplete investigation that was going on for a period of 30 or 40 days, eight hours a day, for many of the officials in the institution, and what did they find with regard to Mr. Bloeth, Mr. Suggs and Mr. Guillard?

A That there was -- there was no evidence ever developed with which I could make a specific charge against any one of the three of them, as being involved in that experience.

Q Now, isn't it possible that -- excuse me, just a minute --

Now, on February 15th of 1973, wouldn't it have been possible for an inmate at the Clinton Correctional Facility who wanted to become President of the Liaison Committee, and knew that there was another group at the Clinton Facility who perhaps had

more support with the inmates, and less support with the Clinton Correctional Facility officials, to come to you and say, or come to some officer and say, "Officer Smith, Officer Jones, there is this group of inmates who are trying to take control of the Liaison Committee by force."

A That is possible.

Q Now, on the basis of that information, would you have locked them up for 40 days?

A No, I didn't say that.

Q But these men were locked up for 40 days on the basis of no more information than that, is that correct?

A These men, among many others, were separated from the population untilour investigation was completed, until our search of the facility was completed, until many inmates had been transferred out of the facility, until stability was restored to an institution that had become very sick by the 15th of February. We were in trouble.

Q Now, Mr. Gard, was it necessary to keep these men in E Block pending this investigation, rather than keeping them in their own cell?

A In their own cell they would not have been separated from the population. E Block was a small housing unit, and we were able to contain all of these under

investigation in E Block at that time -- in E Block as a special housing unit, to augment Special Housing Unit No. 14.

Q Doesn't a keep-lock separate individuals from the rest of the institution?

A No.

Q And in E Block, how long a day is a man locked in his cell?

A He is in the cell, but other people are in the gallery, and people are on open gallery above and below him, and he has --

Q (Interrupting) So it is necessary that they couldn't talk with any other people in the institution?

A That is what we believed at that time.

Q Why did you believe that?

A We were trying to establish, by our investigation, just what had caused this severe apprehension and this climate of contention to settle on the facility.

Q Now, I realize that, Mr. Gard, but I am asking you why was it necessary to keep these men from talking to the rest of the population?

A I am coming to that. In our efforts to restore stability, we believed that it was necessary to separate from the general population anyone who we believed possibly might be involved in the agitation.

Q My question is, why?

A Because so that they could not spread the agitation any further than it already was.

Q Now, is it normal procedure for inmates to be housed in a special housing unit prior to a transfer to another institution?

A Generally.

Q Is it the normal procedure in Clinton Correctional Facility for an inmate to be housed in a special housing unit if he is about to be transferred?

A No, not necessarily, no.

Q Mr. Gard, I show you Defendant's Exhibit K (offering). Now, if you could read the caption on the top, and each of the notations in regard to each of the plaintiffs on there, and read it into the record.

A (Reading) "Individuals in keep-lock pending investigation and screening process as previously reported."

Q And could you read the notation on Mr. Bloeth, and Mr. Guilliard, and Mr. Suggs?

A "Raymond Guilliard continue in same status pending our R.X. Program. Francis Bloeth continue in same status pending R.X. Program. John Suggs continue in same status pending R.X. Program."

Q Now, doesn't that document indicate that Mr. Bloeth,

Mr. Suggs, and Mr. Guilliard would have been -- would have been kept in Unit 14, or in special housing units, until they went to the R.X. Program?

A No, the R.X. -- if the reason for the transfer here had, for example, been denied, the investigation would have been -- it would have continued, and we would have had to make an internal decision at that time as to how we were going to dispose of these allegations.

Q Does this document to continue segregation pending R.X. Program, doesn't it?

A It also says continue in same status, meaning continue the investigation.

Q Mr. Gard, E Block is -- you testified on direct that E Block had been declared a special housing unit, is that correct, and Unit 14 is a special housing unit, is that correct, and would you describe what the purpose at the Clinton Correctional Facility of a special housing unit is?

A Under normal circumstances?

Q Yes, under normal circumstances.

A It is used for two purposes, two primary purposes: One, to house disruptive inmates of the non-compliant type; and another one is separation from harm .

Q Now, how about inmates convicted of serious disciplinary infractions, or found guilty?

A Some of them are, yes.

Q Now, could you describe briefly what the difference between special housing units and keep-lock is?

A Keep-lock is housed in their own cell.

Q In their own cell. So would that be considered a lesser -- in the normal situation where punishment was being imposed, would that be considered a lesser punishment or a less severe restriction?

A No, the assignment to the special housing unit often begins with a keep-lock.

Q I realize that.

A Most generally it does.

Q Would confinement in one's own cell, that is not as severe a restriction upon the inmate as confinement in a special housing unit, is that correct?

A Probably not.

Q Now, Mr. Gard, you are familiar with the departmental rules regarding administration on special housing units, is that correct, and with the rules that were in effect in 1973?

A Yes.

Q Is that correct?

MR. RICHMOND: May I have the rules that were put in as an exhibit?

THE COURT: I think that this is it.

Better look at it and see if it is the revision (offering).

BY MR. RICHMOND:

Q Would you look at these rules, please (offering)?

A Yes.

THE COURT: I assume that the purpose is not to acquaint me with the rules?

MR. RICHMOND: That is correct.

THE COURT: Some other purpose?

MR. RICHMOND: Yes, that is correct.

BY MR. RICHMOND:

Q Now, could you state briefly what the procedure is for placing, and when a man is placed under those rules, what the procedure is for placing a man in a special housing unit?

A He can be recommended for such a program change by the Adjustment Panel. It can be done in an action, in a Superintendent's proceeding, and it can be done at his own request for protection.

Q In the first two instances, those are hearings in which the inmate comes and responds in front of the Adjustment Committee, and the Superintendent's proceeding. Now, in any other instance, outside of where the individual requests that he would like to go to Unit 14, in what instances would a hearing not

be required?

A If there is a present and instant danger to the security of the facility, or the safety and welfare of inmates or employees.

Q Now, Mr. Gard, could you show me which rule in those rules give you the authority to do that?

A I don't find here the parts that do relate to the special housing units.

Q I think that we have it.

THE COURT: Do you want No. 6? Can't this be pointed out to me in a brief?

MR. RICHMOND: It is our opinion that there isn't any.

THE COURT: If there isn't any, you can point out that equally well, can't you? Can't you? We have spent too much time here proving less than nothing, in my estimate.

MR. RICHMOND: I respectfully disagree.

THE COURT: I assume that you have taken the time, and I am not charging you with just consuming time needlessly and deliberately, but we have got a case here that I don't think the State -- the State doesn't make any claim that they ever gave this man a hearing, do they?

MR. O'BRIEN: No, we don't.

MR. RICHMOND: But, your Honor, the State has claimed that there was an emergency in existence, and that they relied on that emergency, and I think that it is very important in this, since this is one for damages, to show that Mr. Gard, Mr. LaVallee, and Mr. Oswald were acting under what they believe to be valid regulations that would permit that. If Mr. Gard can't find a regulation that permits it, so be it, but I think that that is very relevant to the case.

THE COURT: But if there is no regulations, as you say --

MR. RICHMOND: (Interrupting) Then I would say that they violated their own regulations.

THE COURT: Then why do you give them or try to give them an opportunity to find one? If it isn't there, [illegible] it out to me, can't you? It is like asking if this room is full of air.

MR. RICHMOND: Let the record show that Mr. Gard couldn't find one.

THE COURT: He can't find it in Chapter V, or at least he says he can't, with all of these interruptions. I don't know whether I will find it or not, or if anybody can find it or can point it out to me.

Very frankly, my patience is wearing thin.

MR. RICHMOND: We are being as brief as we can, your Honor.

THE COURT: I would like to get at the issues.

MR. RICHMOND: I am attempting to do that.

BY MR. RICHMOND:

Q Mr. Gard, now, if we are going into this emergency, which existed, were you Deputy Superintendent, or Superintendent at that time? Whose decision was it to declare the emergency?

A The Superintendent, after consulting with the Commissioner's office.

Q And did you make any recommendations during that time?

A Yes, I did.

Q And did you consult with the Superintendent quite a bit concerning the conditions?

A Yes, I did.

Q And the atmosphere, and what was the basis of your recommendation?

A I recommended that it was absolutely vital at this time, to close this place down, or we are going to lose it.

Q Now, after that initial shutdown, how long did the

emergency continue?

A I believe our final report to the Commissioner's office was in early April.

Q So the emergency at the Clinton Correctional Facility continued from February 15th until April?

A That is right.

Q Now, after the initial shutdown, though, there weren't any weapons in the institution, or certainly very few weapons in the institution, and how do you know that an emergency situation was still continuing? What made you -- on what did you base your judgment that the emergency was continuing up until April?

A We were watching the stability gradually return. It was a very gradual process.

Q But an emergency, nevertheless?

A And after the second day, we experienced comparatively little disruption, or disruptive conduct. It was a gradual return but the return was predicated on many things, and one was the results of the search, and two, I received information, again, from many sources that the general population felt their safety returning with each transfer out. That they felt that their safety was becoming more secure.

Q And then did the declared emergency continue until April, is that right?

A Yes.

Q And this information that you received from inmates and the officers you relayed all of this information to the Superintendent?

A Yes.

Q Mr. Gard, do you know that in spite of your recommendation, Superintendent La Vallee didn't believe there was an emergency in February of 1973?

A Excuse me?

Q Did you know that in spite of your recommendation as to the atmosphere of the facility, and whatnot, that he didn't believe that there was an emergency in 1973, February of 1973?

A No, I do not know that.

Q Did you know that on February 22nd, Superintendent La Vallee wrote to the Commissioner and stated that normal activity at the institution was returned by the following Thursday?

A I was aware of that, yes.

Q And did you know that he had made an announcement to the institution that by Wednesday, the 21st, we will be in as normal as possible a position -- well, the announcement said on Wednesday the 21st that we will be in as normal a position in terms of the search, and most shops and work areas will be open?

A Yes.

Q Did you know that he testified under oath that there had not been an emergency at Clinton in the past year, on March 22nd, 1973?

A No, I did not know that.

Q Superintendent Gard -- Deputy Superintendent Gard, didn't you testify under oath that there hadn't been an emergency at Clinton in February of 1973?

A Yes.

Q And you testified that there had not been an emergency?

A No, I testified that there had been. I am so testifying now.

Q Mr. Gard, do you remember giving a deposition in the case of Ray versus Rockefeller?

A No, I do not.

Q Do you remember giving a deposition on March 22nd, 1973?

A No.

Q And are you familiar with the case of Ray versus Rockefeller? Did you have any --

A (Interrupting) I have no recollection of what you are referring to at all.

THE COURT: Refresh the witness' recollection with the time and place.

BY MR. RICHMOND:

Q That was taken on March 22nd, 1973, right?

THE COURT: Where?

MR. RICHMOND: At the Clinton Correctional Facility, and Mr. O'Brien was present, and it was taken by Attorney Robert Salsberger, of Legal Right in New York.

THE COURT: And under which you would have been sworn and testified under oath?

THE WITNESS: I have made many -- I have made many depositions. You are not refreshing my memory, right now.

MR. RICHMOND: I could read the testimony at that point.

THE COURT: He is referring to a deposition in the case of Essex-Ray versus Rockefeller. Was it subsequently tried in Albany?

MR. RICHMOND: Well, I don't know that it was, your Honor.. There were two Ray cases.

THE COURT: There were more than two; there was a book of them.

MR. RICHMOND: I don't know that.

BY MR. RICHMOND:

Q On thatdate, and perhaps this will help your recollection, Mr. Gard, there was a question, and

this is March 22nd, 1973, and it was, "Is there an emergency at the present time?"

"Answer: No.

"Question: Was there last week?

"Answer: No."

And then it went on and you were questioned about just the week before, and just two weeks ago, and two weeks ago there was, and two weeks ago there was an emergency at this institution.

You answered: "We reopened the facility Thursday following the shutdown."

Then you said, "Since that time, we have not had a state of emergency."

Do you recall that testimony, Mr. Card?

A I could have made those statements, yes.

Q And you were testifying under oath at that time?

A Yes.

MR. RICHMOND: I have no further questions.

MR. O'BRIEN: I have nofurther questions.

THE COURT: That is all?

(Whereupon the witness was excused.)

MR. RICHMOND: Your Honor, is Mr. O'Brien resting?

MR. O'BRIEN: Yes.

THE COURT: The defendant rests.

MR. RICHMOND: At this time I would like to introduce a brief segment from the deposition of Mr. La Vallee, a defendant in this action, that was taken in the case of Ray versus Rockefeller.

THE COURT: Is this rebuttal?

MR. RICHMOND: Yes, this is on rebuttal.

THE COURT: All right, take the rebuttal. If you would like your associate to take the witness stand, and he could respond, it will save your voice and make it a little easier to understand, perhaps.

MR. ENGLANDER: I do not have a copy.

MR. RICHMOND: Yes, I think that we do.

MR. O'BRIEN: Since I don't have a copy, may I look over your shoulder, Mr. Richmond?

MR. RICHMOND: Sure.

This is a deposition taken on the same day, March 22nd, 1973, and it is a deposition of Edwin LaVallee, Superintendent of Clinton Correctional Facility, and it is the case of Ray versus Rockefeller in the United States District Court for the Northern District of New York, and the number is 71 Civil 488.

This is beginning on page 24 -- I am sorry, I guess it is page 20.

(At this point Mr. Englander took the stand and gave the answers to the questions as follows:)

"BY MR. RICHMOND:

"QUESTION: Have you declared a state of emergency at this institution at any point during the past year?

"ANSWER: No.

"QUESTION: Have you made any reports to your superiors in Albany in the Department of Correction about emergencies at this institution during the last year?

"ANSWER: I made constant reports about everything.

"QUESTION: Had you in any way informed them that there was an emergency at this institution over the past year?

"ANSWER: No."

MR. ENGLANDER: May we have a moment, your Honor?

THE COURT: Yes.

MR. O'BRIEN: If the Court please, I am going to ask that this entire transcript be introduced into the evidence because I don't feel that just portions of these sentences here are fair to the

Superintendent. The line of questioning, I am sure, followed an entirely different --

THE COURT: (Interrupting) I don't know what -- well, Counsel has indicated that they have no objection to it being received.

MR. ENGLANDER: Perhaps Mr. O'Brien would like an opportunity to read some other portions directly into the record?

THE COURT: He obviously has not had an opportunity to examine it. We can recess and give you an opportunity to examine it.

MR. O'BRIEN: I do not see any objection to putting it in.

THE COURT: If he is willing to put it in, put the entire record in, and that puts the Court in possession of everything. Put in Mr. La Vallee's entire testimony.

MR. O'BRIEN: I would like to make the same request with respect to Mr. Gard's deposition, also.

THE COURT: No, Mr. Gard is here, and he was cross-examined in reference to that. The only way I will receive this is by consent.

MR. RICHMOND: All right.

MR. O'BRIEN: All right.

THE COURT: All right, it is received.

It will be a plaintiff's exhibit, and I think it is Exhibit 3.

MR. O'BRIEN: No objection.

THE COURT: It will be received.

(Document marked Plaintiff's Exhibit No. 3 in evidence.)

THE COURT: The evidence is closed. The defendants are remanded to the custody of the Marshal for return to the State institutions from which they were taken.

MR. ENGLANDER: May I have a few moments with them?

THE COURT: Yes.

MR. RICHMOND: Do you desire my closing?

THE COURT: Just wait until we get this taken care of. If you gentlemen want to make your closing arguments, I will hear them.

MR. RICHMOND: May we take a brief recess to prepare this, perhaps five or ten minutes?

THE COURT: We will take a ten-minute recess.

THE COURT: The Court stands for a ten-minute recess.

(After a short recess, the proceedings

were resumed.)

MR. RICHMOND: Now, I will make a very brief statement.

At the outset I said I was prepared to submit a post-trial brief, if you so desire. The evidence presented showed that the plaintiffs were taken out of their cells in the general population and that the three enjoyed many liberties in February of 1973, and placed in special housing units. They continued in special housing units in E Block, and they testified to the deprivations that they suffered there, and then on March 12th, they were transferred to a special housing unit in Unit 14, where they testified they received even greater deprivations than in E Block, and even, of course, than in the general population.

The plaintiffs further testified, each of them, that none of them have received any charges, any statement or any hearing, and no reason for their keep-lock, or no reason for their placement in segregation, other than the fact that there was some investigation, based on an emergency that had existed.

Now, the defendants in this case attempted to justify this treatment by saying that there had been an on-going emergency that justified

this investigation. There may well have been an emergency at some point in February of 1973. But we do have this statement of Superintendent LaVallee admitted into evidence, and uncontroverted that there was no emergency at any time.

THE COURT: Now, you state an uncontroverted --

MR. RICHMOND: (Interrupting) The fact -- Mr. LaVallee himself did not testify.

THE COURT: Not only that, but isn't there a memo in evidence --

MR. RICHMOND: (Interrupting) But that memorandum does not specifically mention the word "emergency." What it says is that this action is being taken pursuant to 251.6 of the Rules. I should get to that later.

THE COURT: Maybe I should not have interrupted you. We will agree that I should not have interrupted you.

MR. RICHMOND: They stated in the deposition of Mr. LaVallee, he states that there was no emergency. Mr. Gard testified that -- in his deposition that there had been no emergency, and in February of 1973 --

THE COURT: (Interrupting) Let me just

stop for a minute. Does the plaintiff claim that there was no emergency here?

MR. RICHMOND: Well,we say that there was no emergency from the time these men were placed in segregation. That there may or may not have been an emergency on February 15th, and that is an issue in our case.

THE COURT: Even you don't subscribe to the fact that there was no emergency at any time?

MR. RICHMOND: We don't know but it is our position that there was none at the time that these men were placed in --

THE COURT: Where?

MR. RICHMOND: In E Block, and then -- the complaint doesn't deal, it doesn't deal with that initial shutdown of the whole institution.

They have also claimed that there was an investigation on-going throughout this emergency. Mr. Gard said that there had been some unspecified charges against these men, that they did not have enough evidence to make a formal charge, but he did have enough evidence to, to put them in E Block, and in other words, he had enough evidence to not give them due process, but enough evidence to put them in special housing units.

The notice which was given out in Plaintiffs' Exhibit A, was given to each of the plaintiffs at the time and refers to Section 261.6-F, and the notice doesn'tmention the word "emergency." It just simply says that that action is taken pursuant to 251.6-F.

May I read the rule. It says that the provisions of this section shall not be construed as to prohibit emergency ation by the Superintendent of the Facility.

And the section which had preceded it was a disciplinary proceeding of due process.

And if necessary, for the safety and security of the facility, all inmates or any segment of the inmates in a facility may, on the order of the person in charge of the facility, be confined in their cells or rooms for the duration of any period in which the safety or the security of the facility is in jeopardy.

Then, this ends Section 261.6-F, and Mr. LaVallee or Mr. Oswald did not have the authority to place these men in special housing units. What 261.6-F allows is for them to be placed in keep-lock in their own cells for the duration of the period where the safety and security of the facility is in

danger.

So even if there is an emergency going on at Clinton Facility, and even if there was one going on throughout the whole 40-day period until they were transferred out, it is our position that this rule did not give them authority to put them in special housing units.

And of course, we deny this fact that there was an emergency on-going throughout that whole time.

THE COURT: That is, you find the last part of that first sentence as a limitation to the authority to take emergency action?

MR. RICHMOND: Yes, I do, your Honor.

Now, what we think is happening in this case is that the defendants are merely using the word "emergency," and investigation, when none, in fact, existed, to justify the foregoing of due process procedures in the plaintiffs' case.

There is no doubt that had they been given a specific charge and ended up in Unit 14 or in E Block, they would have been entitled to a full due process hearing under their own rules. But merely by using the words "investigation" or "emergency" the defendants have attempted to forego

all of these procedures whatsoever, and it is our position that it was very well settled in this situation that they can't do that.

In Smoake versus Frits and McGinnis, it says that a prison administrator cannot be able, merely by the use of words, to forego due process.

THE COURT: I will have a question about that a little later.

MR. RICHMOND: I may also say that in Newkirk versus Butler, which is a 2nd Circuit case, which was also decided along the same line.

This was a well-settled law of the jurisdiction which was in effect at that time, and the reason the Supreme Court case of Wood versus Strickland, which is reported in the U. S. Law Week, at 4293, it was decided February 25th of 1975, and that case, in that case the Supreme Court held that good faith in determining whether there is good faith in the actions of the public official, one of the things that is taken into effect is the settled law in that jurisdiction at the time. In other words, that if they are charged with knowledge of that law, and that should be taken into effect in determining damages. They cannot be held to have acted in good faith if --

THE COURT: (Interrupting) But wouldn't good faith afford immunity as a defense? It would afford an absolute defense?

MR. RICHMOND: But not if there was a law of the jurisdiction to the contrary.

THE COURT: Well, the law contrary, I can't rely on a contrary law to establish good faith.

MR. RICHMOND: But they have immunity if they have acted in good faith, but if the law is to the contrary, they can't have acted in good faith.

THE COURT: I think that we are saying the same thing. It is just Counsel's fear of agreeing with the Court, or an adversary, I am afraid.

MR. RICHMOND: That might be it.

THE COURT: Which isn't sometimes a bad idea. As a matter of fact, when I was a young lawyer, one of the first lessons I learned was, when I was loaded for bear, and I insisted on making my complete argument, and after I got all through, and fortunately prevailed, a kindly old Judge, whom I am sure was much my junior today, called me up to the bench and after explaining that he had not seen me before, gave me some kindly advice by telling me that when you see a Judge is with you, it is a good

time to be quiet.

I don't mean to indicate by that --

MR. RICHMOND: (Interrupting) Yes, I know. I wasn't going to touch that at all.

So, we feel that they were responsible for these actions, and they did not have immunity, and that the settled law of the jurisdiction was to the contrary of the way they acted, and they cannot be said to have acted in good faith, and they are liable in damages for the suffering that these men went through during this 40-day period.

I have nothing else, and thank you.

MR. O'BRIEN: Your Honor, the defendants in this case rest their defense upon the fact that the safety and security of the Clinton Correctional Facility was in danger as a result of a series of incidents which took place both on February 15th, as well as a prior incident of assault, which took place in January.

In the operation of a maximum security prison facility, the officers in charge, the Superintendent and the Deputy Superintendent, and those people who -- especially the Deputy Superintendent who has charge of the security, he is charged -- that is his title, Deputy Superintendent in charge of Security,

for the facility, and he has a tremendous responsibility.

It is our position here, based upon the testimony of this individual, that in February of 1973, based upon facts and occurrences which took place, he deemed it necessary to recommend to the Superintendent that a keep-lock take place, of the facility, that the facility be closed down for a period of time, and that an investigation take place.

Now, under the Code, Rules and Regulations of the State of New York, it provides specifically that where the safety or security of the facility, if necessary for the safety or security of the facility, all inmates or any segments of the inmates in a facility may, on the order of the person in charge of the facility, or his duly appointed or duly authorized agent, be confined to their cells or rooms for the duration of any period in which that safety or security is in jeopardy.

THE COURT: What does that mean by "in their cells or their rooms"?

Does that mean what it says, or does it mean that we can put you in any room or any cell in the institution?

MR. O'BRIEN: I would read it to mean that they may be placed in their cells or rooms, and

these rooms can be special housing.

THE COURT: That is, you just used the "their" as defining cells, but not rooms?

MR. O'BRIEN: I would believe so.

THE COURT: So that when you go to Unit 14, you are in a room, and not a cell, or -- well, this is a room and not a cell? These are?

MR. O'BRIEN: These are rooms that are not set apart.

THE COURT: Aren't you stretching the language a bit beyond recognition?

MR. O'BRIEN: Well, I don't think so. I think that so far as the question of semantics is concerned, I think that we have to look at the situation herein, and where this is taking place. To be able to put a man in his cell, where he can still communicate, and where he can still be disruptive, and where he can still cause trouble -- well, it is not the same.

THE COURT: If he does, aren't there remedies, and he can be brought before the Adjustment Committee, and confined to Unit 14 as a matter of internal punitive action?

MR. O'BRIEN: That is true. That is true, but I think that the words "or rooms," if they

intend -- if the drafters of these rules, and they were drafted, I believe, by the Commissioner or the former Commissioner of Corrections, Mr. Preiser, meant to imply that limited confinement to their cells, there would be no necessity for him to add the words "or rooms."

As I understand it, in this --

THE COURT: Are there any prisoners in rooms?

MR. O'BRIEN: Each prisoner, when he is in general population, has a cell.

MR. RICHMOND: For the purpose of clarification, I think that that applies to some of the work-release facilities, and minimum security institutions where they are allowed to have rooms.

MR. O'BRIEN: I don't think that there is any law on the subject as far as what that means, but I would point out that I think that they may be --

THE COURT: (Interrupting) What you are telling me is that I should treat this like a statute, and ignore the words, and attribute the intent?

MR. O'BRIEN: Well, I think that you have got to consider the fact that in a situation where the safety or security of the facility is in fact involved --

THE COURT: (Interrupting) I am not arguing about what conduct might be appropriate. I am just talking about what conduct is permitted here.

I think that in such an emergency, an explosive situation, I suppose that rumor would be adequate. Rumor is what feeds this kind of a psychology. But I am now looking at a particular regulation, and trying to determine what it says, and that is what I am asking you.

MR. O'BRIEN: Well, it is our position that if the people who are in charge of the facility acted in the manner in which they did, and they read this particular sentence to mean that they could be confined in their cells, which initially they were, initially, when the emergency, when the situation arose, they were first confined to their cells. Then, they found it necessary to separate them and place them in other housing units.

They do not use the word "housing rooms," and I would urge upon the Court that the word "rooms" there, in addition to the word "cells" is there for the purpose of enabling the Superintendent or those in charge who have responsibility of the security and safety of the facility to either place these

individuals in their cells, or their rooms.

THE COURT: And you would call Unit 14 a room?

MR. O'BRIEN: I would call it special housing.

THE COURT: I think that I could imagine a better argument than that.

MR. O'BRIEN: Well, that is what I would urge upon the Court. I do not see any reason for the word "rooms" being there. But I am sure that they are not going to --

THE COURT: (Interrupting) Well, I think that it is probably there because rooms are used in some of the minimum security facilities.

Now, I don't know about the State facilities, but I know I have seen rooms, as such, that would probably meet the description of a room in Federal institutions, and you could distinguish them very readily, unless you were blind, from a cell. I have seen rooms, and I have seen dormitories.

So that I would say that we have got to give whoever drafted this, credit for some acquaintance with the English language, and what a cell looks like, and what a room looks like.

MR. O'BRIEN: Well, again, I would urge

that the Court consider the fact that the individuals who were guided by these rules are not experienced attorneys, and they are men who read these rules and interpret them to the best of their ability and act in good faith, and have, at the same time, in the front of their mind the safety and security of the facility.

Now, with respect to the evidence that we have produced here: We base our case on this emergency situation that arose, followed by an intensive investigation that was conducted under the overall supervision of the Deputy Superintendent Card, and as he testified there was more than three men involved, and more than three individuals subjected to these deprivations. This was necessary because of the situation that existed, and it called for extreme measures, that is true. It is unfortunate that these individuals, along with many others, lost their privileges, and were subjected to being taken out of the population. However, under the circumstances the question was: What could those officials in charge do? Wait until something happened?

As you just mentioned, they based their actions upon information that was being fed into them. Some of it, it is true, was rumor.

Some of it had no foundation. But still a Superintendent of a prison housing over 1700 individuals, when he receives rumors with respect to certain individuals, he just cannot cast that aside. He must consider them, and he must give them due evaluation, and he must consult, and he must investigate them to the best of his ability, and in my opinion, he must act upon them, at least to some extent.

In this case here, we concede that we did not have enough to bring these men before a Superintendent's proceeding, or to take punitive action against them. But there were approximately 150, according to the record, who required separation from the general population.

It is true that if left in the general population, they would have had an opportunity, if the rumors bear any substance, to stir up the general population and create a situation with respect to this control of this Inmate Liaison Committee. That was the basis of it.

As the evidence or investigation proved, they never were able to actually prove a crime, or prove one way or the other that these individuals were involved, or that many other individuals were involved in this, even in this

control of the Inmate Liaison Committee.

But at the time, there was some basis for it, and they relied upon it, and they acted upon it.

As far as these particular individuals are concerned, it is unfortunate, but it is our position that they were part of a group of approximately 150 people that received the same kind of treatment, and that under the procedures, under the rules and regulations of the State of New York, under the statute, Section 112 of the Corrections Law, the Superintendent is in charge of safety and security, and he must do whatever is necessary to preserve that safety and security, and to preserve lives, if necessary, and to do whatever is necessary to prevent riots, and destruction of State property, and most important, injuries to individuals, whether they be inmates, corrections officers, or to the citizenry.

There is a civilian population there, and there are people working, civilian people, and men and women who work in these facilities whose safety must also be considered.

So that extreme measures, if these be extreme measures, were required, and Mr. Gard, based upon his testimony, was furnished with not perhaps what we might consider legal evidence that would be

upheld by a court, if they were trying someone for a charge of a crime, but he had before him and he was furnished with such evidence in a position that he was in to take action, and to do what he could to guarantee the safety and security of this facility.

THE COURT: Now, as I listen to you, Mr. O'Brien, I think in my mind, at least, we have gone full circle from where we started.

The State or the defendants make no claim that plaintiffs were afforded any notice of charges, or any hearing, or the three fundamental elements required by Sostre. That the reason that they weren't, and the justific ation for not affording them those rights, was because this entire period constituted an emergency action which justified the holding in abeyance of the rules required by Sostre. Is that right?

MR. O'BRIEN: That is right.

THE COURT: So that my factual issue is somewhat like Watergate: Was there an emergency, and how long did it last, in spite of all of the extraneous matters that I have heard.

Now, to me, and I am addressing myself to both Counsel, I think that there is a threshold

question that has been alluded to by plaintiffs, but I think it is far from resolution, and it is troublesome, and that is the question of the application of Wolf against McDonald. Now, of course, I am certain that you are both familiar with the facts in Wolf against McDonald, and the rights that were articulated there were specifically made non-retroactive.

So that if we were to stop right there, of course, due process would not even apply.

Now, plaintiffs, I recognize, say that this retroactivity part of Wolf against McDonald does not apply -- or I may be misstating their position, and if I am , you will have an opportunity to correct me, but as I understand the position it is that Wolf against McDonald does not apply because of the interim ruling of our Court of Appeals in Sostre. Or Sostre, as I discovered, is the way you pronounce his name.

But I am somewhat troubled by the most recent gloss that has been put on Wolf against McDonald, and I would like you gentlemen to address yourselves to it.

It is Cox against Cook and it is reported in 43 Law Week, 3513, and the case --

MR. O'BRIEN: (Interrupting) Is this a

United States Supreme Court case?

THE COURT: Yes.

MR. O'BRIEN: May I have that again?

THE COURT: 43 Law Week,3513.

Now, as you read it, I must caution you, don't spend a lot of time trying to make any sense out of the nonsensical sentence, like I did, because it is just a typographical error in what the publisher omitted, a line, and it destroys the complete sense. Toward the end -- well, maybe I better state the case first.

In any event, this was an action for damages, like our case, and the Court said there is no reason why the retroactivity does not apply to an action for damages, just as much as it applied to the expunction in Wolf against McDonald.

Then, they overruled or reversed, rather, the Circuit Court of Appeals, which had held that a case in that Circuit found that there were due process rights attached to this punitive segregation.

They overruled it specifically on the ground that the case that was relied on came after Wolf against McDonald, where apparently everybody was operating on the assumption -- or it did not come

after, but -- let me see, the discipline determines -- the 1973 conduct here in February and March paralleled conduct in the Cox case, and came before the Court of Appeals -- or the District Court case that the Court of Appeals said the District Court had relied on.

So that consequently it couldn't afford good faith. That is, they weren't relying on an adjudicated case.

In our case, the plaintiffs claim that there was in the precedential case in Sostre.

But the language is far from clear, and it is a question that I think was left open. The Court says here, "The holding was made in the context of a request for expungement of the records of prison discipline determination."

Then, we get into the fact that the same rule obtains in the matter of prison officials acting in good faith in reliance on a pre-existing procedure.

So that prison officials, at least if they are acting in good faith reliance on pre-existing procedure, there would be no requirement, no constitutional requirement for due process.

Then they go on and discuss this case, and they say after all, since the cases that they

are seeking to support the actions of the officials on, came after they took the action, obviously they cannot rely on it, so we have nothing to decide.

But it seems to me that they have left the question open, and I would like you gentlemen, first, to address yourselves to that threshold question.

Now, we may have some help along these lines, as I understand it, because just the past few weeks Judge Foley submitted a similar case to a jury which returned a couple of hundred dollars verdict. Do you know whether or not the State is appealing that verdict, because it had exactly the same factual situation?

MR. O'BRIEN: I am not sure. I don't think -- I would have to check. I did speak to the Assistant who handled it, and that was a few days after he told me that at that time the appeal was still up in the air.

THE COURT: This was before this Cox case, I am quite certain -- this was before the Cox case, and regardless of what Judge Foley does on the motion, if it is appealed, I think it is on precisely the facts that are here, so that the thing to do maybe would be to see what the Court of Appeals does in that case.

Now, if the State is going to view that a couple of hundred dollars judgment, and pay it off, then this will be the case that they will get.

MR. RICHMOND: I am not entirely sure I understand this. Are you saying that Sostre would be of no effect, in view of --

THE COURT: (Interrupting) That is what I want you gentlemen to address yourselves to.

MR. RICHMOND: But you are suggesting the possibility that in view of Wolf --

THE COURT: (Interrupting) In view of Wolf, and the gloss put on it by Cox, Sostre may not have the same significance that I think was attributed to it, before Cox.

I would like to have you gentlemen address yourselves to the question of retroactivity.

MR. ENGLANDER: I think that we would probably prefer doing this in a memorandum.

THE COURT: Yes, I am just asking -- I don't mean now, no. I am suggesting that you address yourselves to that as a threshold question.

MR. ENGLANDER: It is just my thought that it is difficult to follow the exact sequence of these cases.

THE COURT: I don't think that I have

described them particularly well.

MR. ENGLANDER: But on the question of retroactivity, the principle of retroactivity would apply where the new case creates new rights. But not where there were rights already in existence, and I am not quite sure --

THE COURT: (Interrupting) Well, that is what I want you to address yourselves to.

In the first place,we have got the problem of this retroactivity case, and the problems that arise in the context of criminal law, and this is a civil action, and that is one thing that needs to be taken into consideration.

And I think that the Supreme Court has deliberately said, "We are leaving this kind of a factual situation open for the time that it is presented to us."

Now, what you can construe out of their language -- well, only a divining rod would be helpful. A divining rod, and a good brief, would be helpful to me.

MR. ENGLANDER: We will attempt it.

THE COURT: And then when you get by that, I think you each could tell me -- well, of course, this doesn't apply to the defendants, because

they take the position that there was no period of any deprivation. But if the plaintiffs could chart out for me the actual periods of deprivations that they claim, and the nature of the deprivations during each of these periods, the defendants can tell me from the proof, what the proof shows with reference to the different privileges in connection with general housing, lock-key, and the Unit 14 inmates. And if that can be put in simple chart form, like an accountant would do it, it would be helpful.

As a matter of fact, it would have been helpful if you could have stipulated to that, which I think that you could have done.

What about the time here? This isn't injunctive relief or anything, and I am not concerned particularly about the time.

MR. RICHMOND: We will get it within three weeks, no problem.

MR. ENGLANDER: Are we going to get the minutes?

THE COURT: Then, you will have quite a problem, and you will have to wait for that. I would assume that plaintiffs would proceed in forma pauperis? Is that correct?

MR. RICHMOND: Yes, that is correct.

THE COURT: Then, you will have to decide, and have the papers signed, and then order the minutes. Suppose that we say that you will exchange briefs three weeks after the delivery of the minutes.

Then, you will be waiting for the delivery of the minutes, and then three weeks after the delivery of the minutes, and you can file with the Clerk of the Court, and you have to service on your adversary, and you can respond to each other's memorandum ten days after service.

The reporter is authorized to prepare a copy of the minutes for the plaintiff, and I will sign the necessary orders, or whatever is necessary.

MR. O'BRIEN: Should our briefs be mailed to the Clerk?

THE COURT: Mail it to the Clerk, yes.

MR. O'BRIEN: And one copy is enough?

THE COURT: Well, while you are making them, and you have all of the equipment, mail a copy to the Clerk, and mail one directly to me here at Auburn, and do the same with your answering briefs.

MR. O'BRIEN: It will be satisfactory if we address the letter to the Clerk?

THE COURT: Yes, and send me a copy,

if you will, please.

MR. O'BRIEN: Thank you.

MR. RICHMOND: How long will it be for the minutes?

THE COURT: As soon as he can. I am sure that you know how busy this District is.

Incidentally, I would like each of you to submit proposed findings and conclusions at the same time, and I think that the report should show that I want to compliment the Counsel on the manner in which this was tried, and particularly referring to the fact that for the most part we were able to confine it to the issues, which is not always the case in this type of case, and sometimes we become a forum for spectators, instead of making a record for the courts.

MR. RICHMOND: We did not have any spectators, your Honor.

THE COURT: Thank you, gentlemen.

THE CLERK: Court stands in recess until 3:20 p.m.

(Whereupon, the proceedings were concluded.)

of opinion that lead to incidents of fights and sometimes, stabbing.

Q Yes.

What sort of weapons are used in a stabbing?

A Usually homemade, if any. It doesn't happen very often, but it has happened.

Q These stabbings happen to have been individual incidents which you've been able to isolate, you mean?

A Group incidents?

Q Well, have they been part of a scheme or something to --

A I don't know that.

Q Do you have any reason to believe that they have been?

A Well, I had reason to make investigations when we had an incident of that kind and try to determine the cause of it, if that's what you mean.

Q Have you declared a state of emergency at this institution at any point during the past year?

A No.

Q Have you made any reports to your superiors in Albany in the Department of Correction about

emergencies at this institution?
During the last year?
A I make constant reports about everything.
Q Have you, in any way, informed them that there was an emergency at this institution over the past year?
A No.
Q Thank you.
A Not that I recall.
Q Thank you.

Okay, I'd like to turn now to due process and the procedures used in discipline in the institution.

MR. O'BRIEN: I think we're going to have -- can't we get that kind of questioning from the Deputy Guard who's going to testify? Mr. Lavallee does have deputies which handle --

MR. STOLZBERG: I understand that and perhaps an objection to a particular question but --

MR. O'BRIEN: In the interest of time, I think that these questions with respect to due process and disciplinary procedures,

Q Which man? The man that's being placed in Unit 14?

A Very likely. Maybe, I said.

Q Yes. Well, in a situation like that, would he have any opportunity to contest being placed in Unit 14?

A Not necessarily.

Q Would there be a maximum amount of time that he could be in Unit 14 for one of these non-disciplinary reasons?

Or not protection reasons?

A Well, there would have to be a hearing frequently.

Q What do you mean by frequently?

A Within every seven days.

Q And that would be a hearing by what?

A The Adjustment Committee.

Q He could not stay in Unit 14 more than seven days under any circumstances?

A Well --

Q Except pursuant to a judgment of the Adjustment Committee?

A That is not so.

Q Yes?

A The Superintendent's Hearing or the Adjustment Committee could assign a time, a period of time, for detention.

Q But he would have to have been before the Adjustment Committee first?

A Yes.

Q In other words, everyone who is in Unit 14, except those, possibly, for their own protection, would have been before the Adjustment Committee or the Superintendent's Committee --

A Yes.

Q -- at some point?

A Yes.

Q No exceptions to that?

A Mr. Gard -- I know of none offhand. There could be exceptions to it, under certain circumstances. If I felt or Mr. Gard felt that as a preventive measure, a man would be taken to Unit 14, or as a preventive measure, then very likely, it would happen. And the Adjustment Committee would see them later.

Q Yes.

A This is not general.

Q That would still be within a week though, wouldn't

it?

A Yes.

Q It would.

When you say, or when you use the phrase before the Adjustment Committee, do you mean that in the physical sense? The man is given the opportunity to physically confront the -- discuss the incident with the Adjustment Committee?

A Yes.

Q Or the Superintendent's Committee?

A Yes.

Q Okay.

Are the people placed in Unit 14 treated differently on the basis of the different reasons why they are placed there?

A Differently --

Q In other words, if a person is placed therefor his own protection, is he treated differently than a person placed there as a disciplinary measure for an infraction?

A Generally, no.

Q What about people who are placed there prior to transfer?

A Same.

Q Is Unit 14 used as a punishment?

A Yes.

Q Now, before you said some people were placed there who weren't being punished.

A Well, generally speaking, it's used as a punishment. Now, there might be other reasons why a person might be placed there that I have explained already.

Q The treatment of the person placed there would be the same whether he is being placed there for --

A I don't know what you mean by the point of view of being placed there. The circumstances, in the place are the same.

Q Then, it would be equally unpleasant --

A I don't know that it's too unpleasant for anybody.

Q Then, what would be the basis of using it as a punishment?

A Mainly, to separate them from other people.

Q Yes. So when it is used for discipline, for disciplinary reasons, you use it to separate them rather than to --

A We don't attempt to cause people unpleasantness.

Q All right.

from sitting?

A That's right.

Q What is that, sir?

A Well, we searched the place.

Q When was that?

A Shortly after those incidents.

Q And was everyone keep locked at the time, in the institution?

A Right.

Q Okay. And what has prevented the Adjustment Committee since that time from holding a hearing?

A Well, since that was over, as soon as the search was over, nothing permitted them.

Q And the Adjustment Committee ?

A Well, they function normally now, is that what you mean?

Q Yes.

A Oh, I thought you meant just for a couple of days.

Q No, no.

A No, they function normally.

Q Okay. And the Superintendent's Committee is also functioning. Then they've been holding their procedures regularly?

A They went back to normal operations since that time.

Q Have any of the men who were given a hearing, have they been placed in keep lock?

A They were all in keep lock pending -- now, wait a minute. You said, had any of the men that were given a hearing?

Q Were any of the men who were given this notice?

A I don't know.

Q Placed in keep lock?

A I wouldn't know without referring to the record.

Q Doesn't this state that they were placed in keep lock?

A They were right at that time, yes.

Q Do you know what's happened to them since then?

A Without referring to the records, no.

Q Would you be personally responsible for whatever has occurred to them since that time?

A I am responsible for anything that happens here.

Q Would you have direct personal involvement in determining what would happen to them?

A What do you mean by that?